SUPREME COURT, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

CARL J. JARBOE AND ABIGAIL E. JARBOE,
Petitioners

v.

RUSSELL A. READ AND RUTH E. READ ERB,

On Petition For Writ Of Certiorari
To The Pennsylvania Superior Court

PETITION FOR WRIT OF CERTIORARI

ABIGAIL E. AND CARL J. JARBOE,
Pro Se
416 MAPLE ST.
LEBANON, PA 17046
(717) 272-1371

105 pp

QUESTIONS PRESENTED FOR REVIEW

1. Are the courts violating the Constitution?

2. When an appellate court ignores the questions presented for review and instead applies irrelevant standards applicable to a different kind of case, must reconsideration be granted?

3. When a judgement establishes fraudulent misrepresentation regarding standing to litigate for custody, and the dependency court finds material facts contrary to those found by the custody court, must an UNOPPOSED Motion to Open that standing judgement be granted?

LIST OF PARTIES

All parties are listed in the caption and no corporations are involved.

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except a man be born again cannot see the kingdom

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS IN THIS CASE

There are no such reports of the opinions known to the Jarboes. The Superior Court denial is recorded at *Jarboe v. Read*, 817 A2d 1190 (Table) Pa. Super. Dec. 13, 2002 (Superior Court of PA, *Jarboe v. Read* (FN 23) No 00447 MDA 02, Dec. 13). The Pennsylvania Supreme Court denial is recorded at ____ A2d ____ (Table), 2003 WL 21354230, Pa, June 11, 2003 (Jarboe v. Read).

BASIS FOR JURISDICTION

The Jarboes' Motion to Open the judgement of the Lebanon County Court of Common Pleas regarding their standing to litigate for custody of Ryan was denied on 2/19/2002. Their Motion for Reconsideration was denied on 3/8/02. The Jarboes' appeal to the Pennsylvania Superior Court was denied on 12/13/02. Their Application for Reconsideration was denied on 2/13/02. Their Petition for Allowance of Appeal to the Pennsylvania Supreme Court was denied on 6/11/03.

The jurisdiction of this court is invoked under 28 U.S.C. Section 1257 (a).

VERBATIM TEXTS OF PERTINENT PROVISIONS OF CONSTITUTIONS

United States Constitution, Amendment 14, Section 1 (U.S.C.A., Constitution, Amendment 14, Section 1, p. 6) (West Publishing Co., 1987):

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Pennsylvania Constitution, Article I, Section 11 (2001 Pennsylvania Manual, Vol. 115, p. 2-4), (*Purdon's Penna. Statutes Annotated*, Constitution Article 1 Section 9 to end, p. 538) (West Group, 2002):

> "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct."

CONCISE STATEMENT OF THE CASE containing the facts material to a consideration of the questions presented and with the facts which the Jarboes consider immaterial to this petition omitted

Ryan, the subject child, and his family moved into the Jarboes' neighborhood in approximately March of 1992 (R. 366a). From approximately August of 1993 through August of 1996, Ryan spent most of his time in the physical custody of the Jarboes and they supported him financially and otherwise while he was with them. (R. 370a, 371a, 384a). The Jarboes provided Ryan with food (R. 384a), shelter (R. 384a), household necessities (R. 154a) and education (R. 155a). Ruth (the biological mother) abdicated her parental responsibilities (R. 417a–418a) and Russell (the biological father) was a non-participant (R. 394a) once he left Ruth in 1995 (R. 114a). In August of 1996, the Jarboes took court action for custody, temporary custody, and visitation of Ryan (R. 1a), claiming *in loco parentis* status (R. 29a). Judge Eby, without waiting for a response from Ruth and Russell, granted the Jarboes bi-weekly partial custody (R. 29a).

Ruth subsequently contested the grant of partial custody and a hearing was held (R. 29a). Ruth claimed that

the Jarboes had exaggerated how much they had the child (N.T. 10-1-96, p. 17), but she also testified that she had not kept records and could not guess how much the Jarboes had had him (N.T. 10-1-96, p. 17). Abigail Jarboe testified that she *had* kept records and that the Jarboes had had Ryan as much as she had said (N.T. 10-1-96, pp. 38, 40). Ruth's landlady and another neighbor testified that they had *never* known the Jarboes to exaggerate or misrepresent the facts (R. 30a, 31a, 32a). The landlady testified that she *had* known Ruth to exaggerate or misrepresent the facts (R. 31a). Nevertheless, Judge Eby accorded Ruth more credibility than the Jarboes (R. 44a, 45a), and reduced the Jarboes partial custody to tri-weekly without prejudice.

Following that hearing, (at which Ruth was represented pro bono by an attorney who was also employed as county solicitor), even though the Jarboes had not been served before the orders were issued and even though they had been given no opportunity to respond, Judge Eby on a number of occasions issued ex parte orders that adversely impacted the Jarboes, such as quashing subpoenas (R. 4a) and ordering the Jarboes to pay $850 (R. 3a, 46a–48a). This judicial behavior ultimately resulted in bifurcating the issues of standing and custody against the wishes of the Jarboes (R. 49a–54a, 129a, 130a) and in violation of pertinent case law.

Two days of hearing regarding the Jarboes' standing were held (R. 4a), in which, over the Jarboes' protests, Judge Eby refused to hear any evidence about the kind of care (or lack thereof) which the biological parents were providing. The Jarboes had pointed out that this was likely to result in a wrong decision.

The Jarboes presented nine witnesses (R. 57a, 60a–108a). Ruth presented only two. On 5/19/97, Judge Eby issued his Opinion in which he made no mention of any witnesses except Ruth and the Jarboes (R. 146a–163a), in which he ignored crucial testimony that was given by the Jarboes which Ruth testified was correct (R. 66a, 140a, 67a, 135a, 154a), and in which he ignored the evidence that Ruth

was not a credible witness. By order (R. 164a) and Opinion (R. 146a–163a) of 5/19/97, Judge Eby denied the Jarboes standing to litigate for custody of Ryan in spite of testimony and evidence supporting the Jarboes' *in loco parentis* status (R. 27a–145a). As a result of that order, the Jarboes were denied their court ordered partial custody, with no judicial consideration of Ryan's best interests or what separation from the Jarboes would do to him.

The 5/19/97 Opinion of Judge Eby in this case, stated on p. 15 in Footnote 8:

> "At the hearings, Plaintiff Abigail Jarboe stated:
>
> 'A major aim of my life is to promote Jesus Christ, is to promote the fact that the Bible says that except a man be born again cannot see the kingdom of God and that unless a person believes that Jesus Christ is God coming in flesh and has – believes that Christ has died for our sins according to the scriptures; that he was buried; that he rose the third day and was seen of many witnesses that that person is going to hell.
>
> And an aim and desire of my life is to save as many people from hell as possible. To give me a child to virtually raise when you don't believe that is to turn over your child to be taught those things.'
>
> N.T. 12/30/96 p. 158."

In approximately 1998, the Lebanon County District Attorney's office charged Ruth with false swearing in this custody case. She entered and successfully completed ARD. Also in approximately 1998, criminal charges which the District Attorney had stated were unsupportable under the law were falsely filed against Abigail Jarboe. The District Justice dismissed them and they were not refiled.

Because of Ruth's untruthfulness in this case and the behavior of Judge Eby, the Jarboes filed other custody, etc. actions regarding Ryan which were not successful due to the appellate court's reliance upon false facts found in the initial

case on the basis of false testimony of Ruth Read Erb.

In March of 1998, the Jarboes filed a Petition alleging that Ryan is a dependent child (Lebanon County No. 98-35012). Approximately seven days of hearings, concluding on 12/18/98, were held on the subject of Ryan's alleged dependency. A little over ***THREE YEARS LATER***, on 1/24/02, the judge issued his opinion, which, although denying dependency, contained statements and findings of fact supporting the Jarboes *in loco parentis* status. The lower court's 1/24/02 ***DEPENDENCY*** Opinion stated:

> ". . . Ryan's father lived out of state while the hearings were being held and despite being notified of each proceeding, chose, for whatever reason to be a non-participant. Based on what we heard that did not strike us as unusual because it would appear that is how he approached his responsbilities to Ryan. . . ." (R. 394a) (Brief, p. 23)
>
> **and regarding Ruth Read Erb** (the biological mother) and **the Jarboes**:
>
> "We believe that in the past she was satisfied often to let others, and when she lived on Maple Street many times it was the Petitioners" (the Jarboes) "to fulfill what truly were her parental duties. From providing care to feeding to washing clothes, to homework, to making sure dental and medical care was provided – she abdicated each of these functions to others. We believe she was a woman who was perhaps overwhelmed with the responsibility, and who was unable or unwilling to fulfill it on her own. . . . The Jarboes spent much time with the younger boys and had fulfilled many parental functions with regard to them. They helped feed and clothe them, cared for them and even took them on extensive vacations. The Jarboes concern and love for the boys is genuine." (R. 417a, 418a), (Brief p. 23)

The Jarboes' appeal and petition for allowance of appeal of the denial of dependency were timely filed in the appropri-

ate appellate courts and denied.

On 2/19/02 the Jarboes filed a Motion to Open the 5/19/1997 judgement in this custody case. In that Motion, they incorporated the entire proceedings and appeals thereof in the above mentioned dependency action and the one regarding Ryan's brother, in this action number, and in Lebanon County Pennsylvania action number 2000-01360, the case in which Abigail Jarboe has a default judgement against Ruth Read Erb for fraudulent misrepresentation in this case. In #35 of their Motion to Open this case, the Jarboes stated:

> "Thus, clearly, on the basis of the above mentioned finding of facts and discussion in Judge Tylwalk's 1/24/02 Opinion and the above mentioned Default Judgement for Fraudulent Misrepresentation against Ruth Read Erb, justice (and the Constitution and laws of Pennsylvania and *Restatment of the Law Second*) requires that judgement MUST be opened."

However, the 2/19/02 Lebanon County Court of Common Pleas decision stated:

"AND NOW, this 19th day of February, 2002, in consideration of:

(1) the within Motion to Open Judgement
(2) *Boyle v. Steiman*, 631 A2d 1025, 429 Pa S 1 (1993)
(3) the Honorable Robert Eby's 11/21/01 letter
(4) the Honorable John Tylwalk's 1-24-02 findings of facts and opinion in case No. 98-35012
(5) the Default Judgement currently against Ruth Read Erb in case No. 2000-01360 including counts against her for Fraudulent Misrepresentation in Case. No. 1995-20748 (this case) and Defamation, and

(6) other within listed after discovered evidence,

IS HEREBY ORDERED THAT:

The Motion is Denied

BY THE COURT:

JOHN C. TYLWALK J. /s/"

The lower court denied the Jarboes' Motion to Open Judgement the same day it was filed, which was before the biological parents had responded. However, said biological parents have not objected in any way to the Jarboes' Motion, either in the lower court or on appeal. The biological parents both failed to file any brief, and both failed to attend oral argument, and both failed to oppose before any court in any way this action to open judgement.

Following the denial of their Motion, the Jarboes filed a Motion for Appointment of Out of County Judge and for Reconsideration of Motion to Open Judgement. They stated in paragraph #83:

> "Additionally, in spite of being the fairest and best judge that Lebanon County has, Judge Tylwalk has made numerous other rulings against Plaintiffs which were in violation of case law, statutes, the Constitution, and/or Rules of Court."

That Motion was denied on 3/8/02.

The Jarboes timely appealed to the Superior Court. The Memorandum Opinion filed by the lower court in support of its denial stated on pp. 5-6:

> "We believe a review of any of the proceedings we have handled will show that we may have disagreed with the Jarboe's positions at times, but not in violation of their constitutional rights."

In this custody, partial custody, and visitation case, the questions the Jarboes presented to the Superior Court for review are:

> "1. When as a result of virtually identical witnesses, testimony, and exhibits, the dependency judge finds facts supporting the litigants *in loco*

parentis status which contradict the "facts" the custody judge previously found, and when there is a default judgement against the biological mother for fraudulent misrepresentation in the case, what is the proper resolution of a motion to open judgement and restore partial custody?

2. Under what circumstances should the entire lower court recuse itself and an out of county judge be appointed? ***(now moot since all Lebanon County judges have now recused themselves or been recused from cases involving the Jarboes).***

3. Have the child and the litigants' legal and/or Constitutional rights been denied?"

On pp. 27-28 of their brief for the Superior Court, the Jarboes pointed out that in Lebanon County Case No. 2000-01360 (incorporated R. 328a–329a), Abigail Jarboe currently has a default judgement against Ruth Read Erb for fraudulent misrepresentation in this case that this appeal is requesting be opened.

The Jarboes were also appealing the dependency case around the same time. The Superior Court erroneously thought that this custody case was also a dependency case. Consequently, the Superior Court applied dependency standards which do not apply to custody cases and neglected to deal with the issue of fraudulent misrepresentation having denied the Jarboes their rightful standing. The Superior Court also disregarded most of the extensive law the Jarboes had cited in their brief. The Superior Court Memorandum *erroneously* stated that the judgement the Jarboes are requesting be opened in this case was the 1/24/02 decision in the above mentioned dependency case instead of the 5/19/97 order in this case refusing them standing to litigate for custody and *erroneously* stated on p. 7 of their Memorandum:

> ". . . the claim the litigants' and child's constitutional rights have been violated, is a mere reiteration of their sufficiency argument . . ."

The combined Superior Court Memorandum in this case and the dependency case was filed on 12/13/02 and stated on p. 9:

> "Having found each of appellants' arguments devoid of merit, we affirm the Orders denying relief. (Footnote omitted).
> Orders affirmed.
> Judgement Entered."

This was signed by the Prothonotary and dated Dec. 13, 2002. The Jarboes did not receive a separate order for this case.

On 12/23/02, the Jarboes filed an "Application for Reargument Due to Panel's Mistake as to which Judgement was Requested to be Opened and as to the Nature of Said Judgement (Custody, Not Dependency) and Related Problems with Decision and Memorandum." They stated pp. 7–8 of their Application:

> "The Jarboes believe and therefore aver that they have been denied their U.S. and Pa. Constitutional rights to equal protection and a just and right decision because of religious discrimination. . . . The content of the Jarboes' religious beliefs would seem to be irrelevant to a decision regarding whether or not the Jarboes were in the place of parents to Ryan. The fact that they are included in the 5/19/97 opinion, taken together with the lower court's refusal to open the judgement in the custody case, in spite of the above quotes from the Opinion in the Dependency case, seem strongly to indicate unconstitutional bias and denial of the Jarboes' and Ryan's 14th Amendment Constitutional rights to equal protection of the laws."

The per curiam Superior Court 2/13/03 Order stated:

> "The Court hereby DENIES the application filed December 23, 2002 requesting reargument or reconsideration of the decision dated December

13, 2002."

On 2/21/03, the Jarboes petitioned for allowance of appeal to the Pennsylvania Supreme Court. The questions they presented for review were:

> "1. Has widespread Superior Court corruption and Pennsylvania lower court corruption tainted this litigation?
> 2. Have the Jarboes' constitutional rights been violated by the Pennsylvania Superior Court and the Lebanon County Pennsylvania lower court because the Jarboes are pro se and/or because of their religion?
> 3. When as a result of virtually identical witnesses, testimony, and exhibits, the dependency judge finds facts supporting the litigants *in loco parentis* status which contradict the "facts" the custody judge previously found in denying said status, when said "facts" found by the custody judge were based on the testimony of the biological mother, and when said biological mother was subsequently criminally charged and entered ARD because of testimony she gave in the custody case, and when there is currently a default judgement against the biological mother for fraudulent misrepresentation in said custody case, what is the proper resolution of the Jarboes' motion to open judgement in said custody case and restore partial custody when said Motion has not been opposed by any litigant?
> 4. Does the Appellees' complete failure to respond in any way in this action to open judgement require the granting of the relief requested by the Jarboes including granting them standing and a hearing on the best interests of the child?
> 5. Have other of the child and Jarboes' legal and/or Constitutional rights been denied?
> 6. * * *

On 6/11/03 the Pennsylvania Supreme Court issued the following Order:

> **"PER CURIAM**
>
> **AND NOW**, this 11th day of June, 2003, the Petition for Allowance of Appeal is hereby DENIED."

ARGUMENT

The isues in this case involve matters of immediate public importance: namely, the physical safety, welfare, and best interests of the nation's children and the Constitutional rights of those who are in the place of parents to them. Children have died in Pennsylvania because of the courts. The "Report of the Pennsylvania House of Representatives Select Committee on House Resolution No. 127" (completed in 1998 as the result of the murder of toddler Maxwell Fisher by his mother's boyfriend) states on p. 5:

> "The Select Subcommittee found several problem areas within the system which may allow a child to "fall through the cracks".
>
> * * *
>
> C. Involvment of the court."

Wiggins v. Smith, Warden, et al., 539 U.S. ____ (2003) indicates that physical and sexual abuse suffered as a child at the hands of parents and foster parents is enough to mitigate a murderer's culpability. Thus, it becomes the responsibility of the United States Supreme Court to prevent children from suffering such abuse by making sure the courts act upon the truth and the best interests of the child. This case is the United States Supreme Court's opportunity to do just that.

The 554 page *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System*, copyrighted in 2003 by the Pennsylvania Supreme Court, indicates a wide spread and pervasive denial in Pennsylva-

nia of certain litigants' Pennsylvania Constitutional rights to right and justice. Clearly, United States Supreme Court oversight is necessary to stop this and to stop courts from making decisions that endanger children's lives, health, safety, welfare, and best interests.

The U.S. Constitution guarantees the Jarboes and Ryan the equal protection of the laws. However, the Pennsylvania Superior Court panel disregarded the specific law and constitutional considerations raised by the Jarboes in the approximately 22 pages (pp. 47-69 of their Brief) in which they cited approximately 15 cases in their Argument 3 that Ryan's and the Jarboes' legal and/or Constitutional rights have been violated.

Over the past six plus years, the Jarboes have had continuing problems with being denied the equal protection of the laws by various courts ignoring legal issues they have raised and ignoring the case law cited by the Jarboes. The Superior Court panel's discussion on p. 6 of their Memorandum, besides overlooking the law the Jarboes quoted in their brief also overlooked the fact that:

(1) since Ruth, the biological mother, abdicated her parental duties to Ryan to others, and

(2) since Russell, the biological father, was a non-participant in his responsibilities to Ryan, and

(3) since the Jarboes fulfilled many parental functions with regard to Ryan, and

(4) since in this appeal the biological parents have not filed a brief and did not appear at oral argument, and thus are not contesting the Jarboes claims, **therefore** the Jarboes' claims of being in the place of parents to Ryan, etc., as detailed in their Motion to Open Judgement (R. 326a–340a), are established, AND JUDGEMENT MUST BE OPENED.

Ryan has never been allowed to testify, and his legal rights to have his best interests considered have been flagrantly disregarded. For all the above reasons mentioned in this document, this situation should not be tolerated by the United States Supreme Court.

Additionally, the courts now seem to be unconstitutionally biased against litigants who believe the King James translation of the Bible to be the word of God, completely true and totally trustworthy, as the Jarboes do. The content of the Jarboes' religious beliefs would seem to be irrelevant to a decision regarding whether or not the Jarboes were in the place of parents to Ryan. The fact that those beliefs are included in the 5/19/97 opinion, taken together with the lower court's refusal to open the judgement in this custody case in spite of the default judgement for fraudulent misrepresentation in this case against Ruth and the dependency court's findings of facts supporting the Jarboes' *in loco parentis* status, seem strongly, to indicate unconstitutional bias and denial of the Jarboes and Ryan's U.S. 14th Amendment Constitutional rights to equal protection of the laws.

Church of the Holy Trinity Church v. United States, 143 U.S. 457, 12 S Ct. 511, 36 L.Ed. 226 (1892) states on p. 471: " . . . this is a Christian nation." and:

> "'. . . Nor are we bound by any expressions in the constitution, as some have strangely supposed, either not to punish at all, or to punish indiscriminately the like attacks upon the religion of Mahomet or of the Grand Lama, and for this plain reason, that the case assumes that we are a Christian people, and the morality of the country is deeply ingrafted upon Christianity, and not upon the doctrines or worship of those impostors.' And in the famous case of Vidal v. Girard's Ex'rs, 2 How. 127, 198, this court, while sustaining the will of Mr. Girard, with its provision for the creation of a college into which no minister should be permitted to enter, observed: 'It is also said, and truly, that the Christian religion is part of the common law of Pennsylvania.'"

Said U.S. Supreme Court decision also states on p. 459:

> "It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers."

That Supreme Court Opinion, reprinted in the appendix, was delivered in 1892, much closer to our founding fathers than today. It goes into extensive detail regarding the Christian foundation of our country and shows that Christianity is to receive Constitutional protection not afforded to other religions. Under the doctrine of *stare decisis*, decided cases have precedential value and are to be followed. Therefore, the United States Supreme Court since then has violated the U.S. Constitution by allowing consensual sodomy, the murder of unborn children by abortion, and by removing Christian prayer and Bible reading from the schools, all of which are anathema to true Christianity. More than 6,500 unborn children of Lebanon County Pennsylvania residents and/or of women who came to Lebanon County, have died since 1975 as a result of abortion, a nice name for legalized murder. God has said in Proverbs 24:11-12 in the Bible:

> "If thou forbear to deliver them that are drawn unto death, and those that are ready to be slain; If thou sayest, Behold, we knew it not; doth not he that pondereth the heart consider it? and he that keepeth thy soul, doth not he know it? and shall not he render to every man according to his works?"

The country has reaped bad results from these unconstitutional decisions. America is currently under the curse of God. Deuteronomy chapter 28 in the Bible (King James translation) states:

> "And it shall come to pass, if thou shalt hearken diligently unto the voice of the Lord thy God, to observe and to do all his commandments which I command thee this day, that the Lord thy God will set thee on high above all nations of the

earth: . . . But it shall come to pass, if thou wilt not hearken unto the voice of the Lord thy God, to observe to do all his commandments and his statutes which I command thee this day; that all these curses shall come upon thee, and overtake thee; . . ."

A review of that chapter indicates the reason for the droughts, new diseases, and other problems currently plaguing this country. Additionally, the September 11, 2001 attacks against this country show that it is imperative that the Supreme Court, in accord with the above cited Supreme Court Opinion, refuse to offer constitutional protection to the Islamic religion or any other false religion. There is only one God, the God described in the King James translation of the Bible. While America worshiped and obeyed Him, He set us on high above all the nations, just like He promised. Jesus Christ is God, come in the flesh. America has become wicked because America has rejected Him.

Isaiah 55:7 in the Bible says:

"Let the wicked forsake his ways, and the unrighteous man his thoughts: and let him return unto the Lord, and he will have mercy upon him: and to our God, for he will abundantly pardon."

I Corinthians 15:1-9 in the Bible tells us that the good news (gospel) is that:

". . . Christ died for our sins according to the scriptures; And that he was buried, and that he rose again the third day according to the scriptures; . . ."

and that more than 500 people saw him.

In 1892, the Bible in general use was the King James Translation of 1611. The Supreme Court is respectfully requested to read, believe and obey said translation, starting with the Gospel of John. It was written:

". . . that ye might believe that Jesus is the Christ, the Son of God, and that believing ye might have life through his name." (John chapter 20, verse 31,

the Bible).

The above mentioned religious discrimination against Bible believing Christians and/or the fact that the Jarboes are *pro se* seem the most likely reasons for the Pennsylvania Superior Court's refusal to reconsider their obviously fatally flawed Memorandum. The Superior Court per curiam refused to allow reconsideration, even though the panel did not get right either which order was requested to be reopened or what kind of case this is. They applied dependency standards although they are irrelevant in custody cases such as this. They disregarded most or all of the extensive law the Jarboes quoted in their brief. Since the Pennsylvania Supreme Court refused to grant relief, the Jarboes are forced to the inescapable conclusion that they have been denied their U.S. and Pa. Constitutional rights to equal protection and a just and right decision because of religious discrimination and/or because they are *pro se*. Senior Judge Barry Feudale stated in court on 4/21/03, "No judge seems to like *pro se* litigants." (See Appendix H, p. 79). It appears that in the eyes of the Pennsylvania Supreme, Superior, and lower court that certain law does not apply to the Jarboes, although it applies to others. This is unconstitutional. The courts cannot be allowed to discriminate against the Jarboes because of their religious beliefs or because they are *pro se*.

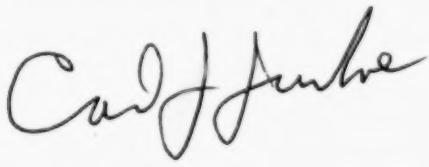
A decision based on false "facts" is neither just nor right. The Pennsylvania Constitution, Article I, Section 11, guarantees the Jarboes and Ryan "right and justice administered without sale, denial, or delay." They have not received it.

CONCLUSION

Therefore, for the above reasons, the Jarboes respectfully request that this Honorable Court grant their petition for a Writ of Certiorari. They further request that after full review, the judgement of the Pennsylvania Superior Court be

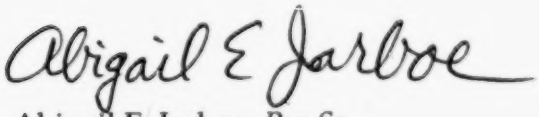
reversed and the case remanded with direction in turn to the lower court to open the judgement in this case, restore the Jarboes' partial custody along with make-up time, and hold a hearing on the best interests of the child as regards custody. The Jarboes further respectfully request that the United States Supreme Court return this country to obedience to the King James translation of the Bible, overturn legalized abortion and sodomy, return Christian prayer and Bible reading to the schools, and grant such other relief for the Jarboes as this Honorable Court deems just and right.

Respectfully submitted,



Carl J. Jarboe, *Pro Se*

Date 8/21/2003



Abigail E. Jarboe, *Pro Se*

Date 8/21/2003

Appendix A

ENTERED & FILED
2002 FEB 19 A 8:32
PROTHONOTARY OFFICE
LEBANON, PA

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA

FAMILY DIVISION

CARL J. JARBOE AND ABIGAIL E. JARBOE,	:	
PLAINTIFFS	:	
V.	:	NO. 1995-20748
RUSSELL A. READ AND RUTH READ ERB,	:	
DEFENDANTS	:	

MOTION TO OPEN JUDGEMENT

AND NOW, this 19th day of February, 2002, in consideration of:

(1) the within Motion to Open Judgement

(2) *Boyle v. Steiman*, 631 A2d 1025, 429 Pa S 1 (1993)

(3) the Honorable Robert Eby's 11/21/01 letter

(4) the Honorable Judge Tylwalk's 1/24/02 finding of facts and opinion in case No. 98-35012

(5) the Default Judgement currently against Ruth Read Erb in case No. 2000–01360 including counts against her for Fraudulent Misrepresentation in Case No. 1995–20748 (this case) and Defamation, and

(6) other within listed after discovered evidence,

IS HEREBY ORDERED THAT:

~~(1) a Rule is issued upon Ruth Read Erb and Russell~~

A. Read to show cause, if any they have, why the Jarboes are not entitled to the relief they have requested, namely:

The Motion is Denied

(A) why the 5/19/97 Order in this case denying the Jarboes' *in loco parentis* status and dismissing their Petition for Custody should not be vacated;

(B) why the Judgement of the Honorable Robert Eby entered on 5/19/97 should not be opened;

(C) why Plaintiffs' bi-weekly partial custody of Ryan Read should not be immediately restored;

(D) why make-up time in reparation for the partial custody of Ryan Read which Plaintiffs have been denied should not be granted;

(E) why a hearing on the best interests of Ryan Read regarding who should have custody of him should not be held; and

(F) why the Jarboes should not be granted such other relief as the Court deems appropriate.

(2) Ruth Read Erb and Russell A. Read shall file an answer to the Motion within _____days after they are served with a copy of it;

(3) the Motion shall be decided under Pa.R.C.P. No. 206.7;

(4) depositions shall be completed within _____ days after Ruth Read Erb and Russell A. Read are served;

(5) argument shall be held on _____, 2002 in Courtroom #2 of the Lebanon City-County Building, 400 S. 8th St., Lebanon, PA 17042 at _____M.

(6) an evidentiary hearing on disputed issues of material fact shall be held on _____, 2002 in Courtroom #2 of the Lebanon City-County Building, 400 S. 8th St., Lebanon, PA 17042 at _____M.

BY THE COURT:

/s/ JOHN C. TYLWALK, J.

PURSUANT TO RULE 236
You are hereby notified that this order has been entered in this case.

AMMENDED ORDER OF COURT

AND NOW, this 8th day of March, 2002, the Plaintiffs' Motion for Appointment of Out of County Judge and Motion for Reconsideration is DENIED.

BY THE COURT,

/s/ JOHN C. TYLWALK, J.

JCT: apa
CC: Dr. & Mrs. Carl Jarboe
Ruth Read Erb
Russell Read

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY PENNSYLVANIA

CIVIL ACTION–FAMILY DIVISION

CARL J. JARBOE and	:	
ABIGAIL E. JARBOE,	:	
Plaintiffs	:	
vs.	:	**NO. 1995-20748**
RUSSELL A. READ and	:	
RUTH READ ERB,	:	
Defendants	:	

APPEARANCES:

Carl J. Jarboe and Abigail E. Jarboe	Pro Se
Russell A. Read	Pro Se
Ruth Read Erb	Pro Se

MEMORANDUM OPINION, TYLWALK, J., MAY 16, 2002.

This opinion is intended to address the issues raised by Carl J. Jarboe and his wife, Abigail E. Jarboe (Jarboe) in their Concise Statement of Matters Complained Of filed in response to an Order we issued pursuant to Pa.R.App.P. 1925 (b). Jarobe sets forth seven matters complained of. It would be a mistaken application of the word to say that each of them is "concise." We will do our best to comment on each of them.

Before we begin, we will review the long and winding history of this case, but will attempt to do so in a direct, concise manner. It will not be easy.

The case filed to this action number began as a fairly

straight-forward divorce matter when Russell Read filed a Complaint for Divorce in September of 1995. The Defendant in the divorce proceeding was his then wife Ruth, now Ruth Read Erb. The Reads were divorced and ultimately, in August of 1996, a Complaint for Custody was filed. The Complaint was filed by Jarboe and sought custody rights with regard to the Read's minor son, Ryan.

Jarboe was ultimately unsuccessful in obtaining custody rights as this court, per the Honorable Robert J. Eby, President Judge determined that Jarboe lacked standing to pursue such rights as Jarboe did not stand *in loco parentis* to Ryan. Jarboe pursued an appeal, and the Superior Court upheld this court's determination. **Jarboe v. Read**, No. 484 Harrisburg 1997, unpublished memorandum (Pa. Super. Filed February 24, 1998).

In March of 1998, Jarboe filed a second Complaint for Custody, alleging they should be awarded custody of the child because Ruth Read Erb had been charged with the offenses of false swearing and unsworn falsification to authorities. 18 Pa.C.S.A. §§ 4903 and 4904. This Complaint was dismissed due to there being a lack of standing and because Jarboe's Petition for Reargument was still pending before the Superior Court. The Superior Court upheld the dismissal of the second complaint as well. **Jarboe v. Read**, No. 525 Harrisburg 1998, unpublished memorandum (Pa. Super. Filed December 4, 1998).

Jarboe then pursued two dependency actions seeking to have this Court conclude that both Ryan and his brother, Alex, were dependent children. After lengthy hearings, this court concluded that the two boys were not dependent. **In the Interest of Ryan A. Read and Alexander L. Mann**, Lec.C.C.C.P. Nos. 1997-35038 and 35012, decided January 16, 2002. The dependency cases are currently on appeal in the Superior Court.

Part of our decision in the dependency cases included extensive findings of fact based on eight days of testimony from over forty witnesses. After that decision was

filed Jarboe filed a Petition to Open Judgment in the custody case alleging there are conflicts in the factual findings between the custody case and the dependency cases which justify opening the "judgement," that is, the determination that there was no standing. On February 19, 2002, we entered an Order denying the Petition.[1] On March 1, 2002, Jarboe filed a Motion for Appointment of Out of County Judge and for Reconsideration of Motion to Open Judgment. On March 4, 2002, we entered an Order denying these requests and this Jarboe appeal followed.

It appears to us that the crux of Jarboe's first and second complaints is their ongoing dissatisfaction with this courts determination that they lacked standing to pursue the custody action. This court twice ruled on the standing issue and on both occasions the decision was affirmed by the Superior Court. Merely because in another proceeding there may be a finding of fact that appears to differ from a finding in another case does not necessarily warrant a re-opening of that case. President Judge Eby's decision was based on a factual record developed in the custody case. The dependency decision was based on the factual record developed in those cases. We believe the facts do not contradict one another as Jarboe asserts and that there is no basis now for opening the judgment of the custody case.

In their third complaint, Jarboe asserts we acted as an advocate for Ruth Read Erb rather than impartially when we denied the Jarboe Motion to Open even though no one asked for it to be denied. Although we think it goes without saying, we do not ascribe to the belief that a court must always grant a Motion even if there is no objection to it. We do not believe a judge would be fulfilling his or her responsibilities

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[1] Although the Honorable Robert J. Eby, President Judge, issued the original order in the custody case, he did not deal with the Motion to Open Judgment. After his decision in that case Jarboe mounted an attempt to impeach Judge Eby and actively campaigned against him in his retention election. He has recused himself from all cases involving the Jarboes.

if what appears to be a baseless motion is granted. Here, all of the facts were explored in both proceedings and the ruling on standing was fully litigated. We did not believe there was a basis to open the judgment so we did not do so.

Jarboe asserts this judge has shown partiality to Ruth Erb in the dependency cases and has unjustly maligned them in an attempt to protect Erb and President Judge Eby and in disregard of the welfare of Ryan. Jarboe asserts that because there were inconsistencies in Erb's testimony the only basis for the dependency decision had to be bias toward them. We believe a review of the dependency proceedings will reveal the patience this court has exercised in dealing with Jarboe and the leeway given to insure they could fully explore the concerns they had. We do not believe the record supports that there was bias or prejudice against them, rather we believe it reflects this court's careful consideration of the facts developed and the law as applied to those facts.

We also do not see why an out of county judge is necessary. President Judge Eby has been the subject of an impeachment effort by Jarboe and has recused himself. Judge Samuel A. Kline was an opponent of Jarboe in legal proceedings in the past and has been recused. Judge Bradford H. Charles was the District Attorney of Lebanon County at a time when Abigail Jarboe was arrested on criminal charges involving Ruth Erb and he has been recused. The writing Judge is the only jurist left in Lebanon County to deal with this, and the many other matters pending before the court, in which Jarboe is involved. We do not believe we have demonstrated bias or prejudice against Jarboe. We have always attempted to treat them properly within the bounds of the law, no better and no worse than anyone else. Merely because we may have decided an issue differently than Jarboe proposes, does not mean we are prejudiced against them. It could just be reasonable minds disagreeing as to what certain facts indicate. We believe a review of any of the proceedings we have handled will show that we may have disagreed with the Jarboe's positions at

times, but not in violation of their constitutional rights. Such a review would also reveal that on many occasions we have accepted the Jarboes' arguments and decided in their favor.

Finally, we disagree with the assertion that we have somehow failed Ryan. We determined Ryan was not a dependent child and therefore his mother was entitled to have custody of him free of any restriction imposed by Lebanon County Children and Youth.[2] We know now that Ruth Read Erb has moved to Ohio and is currently residing with Ryan's father. Based on the prior rulings in these cases, Ruth Erb and Russell Read, Ryan's parents, are the only parties that have rights concerning Ryan, and as far as we know, they are living together, happily. We would not *assume* differently.

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[2] In fact, a review of the record will reveal that at the beginning of the dependency proceedings, Children and Youth investigated the Jarboe complaints and found no basis for filing a dependency petition. Jarboe then proceeded to file the petitions themselves.

Having found each of appellants' arguments devoid of merit, we affirm the Orders denying relief.

Orders affirmed.

Judgment Entered.

/s/ Prothonotary

Date: *DEC 13 2002*

IN THE INTEREST OF : R.A.R, a minor	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: CARL J. JARBOE AND ABIGAIL E. JARBOE	:	NO. 294 MDA 2002

Appeal from the Order in the Court of Common Pleas of Lebanon County, Civil Division, No. 1998-35012

CARL J. JARBOE AND ABIGAIL E. JARBOE,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellants	:	
v.	:	
RUSSELL A. READ AND RUTH E. READ,	:	
Appellees	:	No. 447 MDA 2002

Appeal from the Order in the Court of
Common Pleas of Lebanon County,
Civil Division, No. 1995-20748

BEFORE: TODD, BOWES and TAMILIA, JJ.

MEMORANDUM: FILED DEC 13, 2002

Carl J. and Abigail E. Jarboe appeal from the Orders denying relief requested with regard to the minor child R.A.R., son of appellees Russell A. Read and Ruth E. Read Erb, now divorced. In the interest of judicial economy, the two appeals before us will be resolved by this single Memorandum.

The appellants were the next-door neighbors of the appellees while the latter couple was married. During this time, due to various domestic problems in the appellees' home, appellees' son, R.A.R., often was cared for by the appellants. It was as a consequence of these domestic problems, which sometimes included physical violence and less than perfect living conditions, that the appellants began their attempt to have child declared dependent and removed from the home. Without going into detail, appellants' repeated efforts have failed. Before us now are two appeals from Orders denying requested relief. They are inextricably intertwined. In the matter of 294 MDA 2002, the appellants are appealing from the January 24, 2002 Order denying their petition to have child declared dependent.[1] In the case of 447 MDA 2002, appellants are appealing from the February 19, 2002 Order denying their petition to open the January 24, 2002 "judgment" denying appellants' petition to have child declared dependent.[2] In both cases, the crux of appellants'

---

[1] We note that appellants' current efforts are directed only to the minor child R.A.R. and do not include the other children of appellee mother.

[2] Although no appellee's brief was filed in this matter, the brief filed at 294 MDA 2002 adequately adresses all issues.

argument is that the facts did not support the court's conclusions.

Also included in the latter case is an appeal from the March 4, 2002 Order denying appellants' request for the recusal of all Lebanon County Court of Common Pleas judges, and the appointment of an "out-of-county" jurist. Once on appeal, the appellants also were ruled by this Court to show cause why their appeal filed at 447 MDA 2002 should not be dismissed as interlocutory.

We will begin our analysis with the consideration of appellants' argument that the court's decision finding child not dependent was not supported by the evidence.

A dependent child is one who, *inter alia*,

> (1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk.

42 Pa.C.S. §, **Definitions**. "The definition of a dependent child contained in section 6302 clearly states that a child must lack a parent, guardian or other legal custodian who can provide appropriate care to the child." ***In re M.L.***, 562 Pa. 646, ___, 757 A.2d 849, 851 (2000). A court is empowered to

make a finding that a child is dependent if the child meets the statutory definition by clear and convincing evidence. ***Id.***

> The standard of review which this Court employs in cases of dependency is broad. However, the scope of review is limited in a fundamental manner by our inability to nullify the fact-finder of the lower court. We accord great weight to this function of the hearing judge because he is in the position to observe and rule upon the credibility of the witnesses and the parties who appear before him. Relying on this unique posture, we will not overrule his findings if they are supported by competent evidence.

In re K.D., 779 A.2d 540, 543 (Pa.Super. 2001), *quoting* ***In re A.H.***, 763 A.2d 873, 875 (Pa. Super. 2000).

The record indicates appellants were afforded eight days of testimony in order to address the merit of their claim appellees were inadequate parents, necessitating that the child, R.A.R., be declared dependent. As *pro se* litigants the court afforded appellants much leeway in presenting often far-afield evidence. While admittedly the child's life has not been ideal, and appellants often enjoyed the opportunity to care for the child, we are convinced, as was the trial court, that there was insufficient evidence presented to declare him dependent. The court heard testimony concerning appellee/father's violent tendencies toward appellee/mother, but concluded that tendency did not extend to the child.[3] As for appellants' claim appellees provided caregivers who were inappropriate, some having DUI records or an assault conviction, the trial court reasoned, "[e]ach of things in a vacuum may seem troublesome, but we question if they

---

[3] Appellee/mother had mistaken her blood, the result of a broken nose inflicted by husband, for that of the child. An examination of the child confirmed he was not injured.

really are. There was no testimony presented that despite these incidents in their [caregivers'] background that the children were ever at risk when they were in the company of these individuals." Trial Court Opinion, Tylwalk, J., 1/24/02, at 66. The fact that appellants arguably may have provided the child with what they perceived as a "better life" than that which he enjoyed with appellees is not a basis upon which to find him dependent. ***See In re Rinker,*** 117 A.2d 780 (Pa.Super. 1955).

The issues and theory proposed by appellant are not new and bear remarkable similarity to the seminal case of ***In re Rinker***. The succinct analysis of the underlying principles involved in ***Rinker*** are reported in the Pennsylvania Law Encyclopedia as follows:

> Though it is possible for a parent to establish such an immoral atmosphere that the condition would amount to legal neglect, the mere fact that a parent is a law violator, or uses alcohol to excess, or has in the past committed immoral acts, does not of itself require a finding of neglect or require separation of the child from the parent.
>
> A child is not neglected merely because he is dependent on private charity.
>
> Proceedings to have children declared neglected or dependent are not a substitute for habeas corpus, and it has been held, in effect, that in a dependency or neglect proceeding the court's first duty is to determine whether a child is neglected or dependent, and not, in the first instance, to determine what would be for the best interests of the child. A Superior Court

> opinion, so holding, states that a child cannot be declared neglected merely because his condition might be improved by changing his parents, and goes on to state: "Under our system of government children are not the property of the state to be reared only where and under such conditions as officials deem best. On the other hand, the state is interested in establishing a minimum standard of care for a child's physical, intellectual and moral well being. * * * The welfare of many children might be served by taking them from their homes and placing him in what the officials may consider a better home. But the Juvenile Court Law was not intended to provide a procedure to take the children of the poor and give them to the rich, nor to take the children of the illiterate and give them to the educated, nor to take the children of the crude and give them to the cultured, nor take the children of the weak and sickly and give them to the strong and healthy.

P.L.E. Minors § 32 Who Are Delinquent, Neglected, or Dependent Children, at 406-407 (footnotes omitted), *quoting* ***Rinker*** at 783. We conclude the trial court's findings of fact and conclusions of law were supported by the record. We will not disturb the Order denying appellants' petition for dependency.

Included in the appeal is the claim at No. 447 MDA 2002, once again, that the trial court erred by denying appellants *in loco parentis* status with regard to R.A.R. This issue has been finally adjudicated and we will not revisit it. ***See Jarboe v. Read***, 715 A.2d 512 (Pa.Super. 1998), *appeal denied*,

556 Pa. 692, 727 A.2d 1121 (1998). "Merely because in another proceeding there may be a finding that appears to differ from a finding in another case does not necessarily warrant a re-opening of that case." Trial Court Opinion, Tylwalk, J., 5/16/02, at 4.

Also included in the 447 MDA 2002 appeal is the claim, "the entire lower court [should] recuse itself and an out of county judge [should] be appointed." Appellants' brief at 4. Appellants contend Judge John C. Tylwalk is biased against them, generally because he consistently has not ruled in their favor. Their argument in support of this issue, as well as the claim the litigants' and child's constitutional rights have been violated, is a mere reiteration of their sufficiency argument and includes the claim Judge Tylwalk acted as an advocate for appellee/mother. Appellant's brief at 39-41.

We find this issue to have been addressed adequately by the trial court. In pertinent part the trial court stated:

> We also do not see why an out of county judge is necessary. President Judge [Robert J.] Eby has been the subject of an impeachment effort by [appellants] and has recused himself. Judge Samuel A. Kline was an opponent of [appellants] in legal proceedings in the past and has been recused. Judge Bradford H. Charles was the District Attorney of Lebanon County at a time when [appellant/mother] was arrested on criminal charges involving [appellee/mother] and he has been recused. The writing judge is the only jurist left in Lebanon County to deal with this, and the many other matters pending before the court, in which the [appellants are] involved. We do not believe we have demon-

> strated bias or prejudice against [appellants]. We have always attempted to treat them properly within the bounds of the law, no better and no worse than anyone else. Merely because we may have decided an issue differently than [appellants] propose [ ], does not mean [we] are prejudiced against them. It could just be reasonable minds disagreeing as to what certain facts indicate. We believe a review of any of the proceedings we have handled will show we may have disagreed with the [appellants'] positions at times, but not in violation of their constitutional rights. Such a review would also reveal that on many occasions we have accepted the [appellants'] arguments and decided in their favor.

Trial Court Opinion, 5/16/02, at 5-6. We agree the record supports a finding recusal was not warranted. ***See Corrado v. Thomas Jefferson Univ. Hosp.,*** 790 A.2d 1022 (Pa.Super. 2002) (holding a party seeking recusal must provide evidence of the necessity for a disqualification).

Finally, as stated by Jon F. Arnold, Esquire, Child Law Guardian for R.A.R.,

> To sustain a dependency petition, it must be shown [R.A.R.] is dependent at the time of the hearings. In the eight (8) days of testimony, extensive testimony was presented as to the parental care, which was provided to [R.A.R.]. The trial court was generous in allowing the Jarboes to present evidence of virtually everything that occurred in [R.A.R.'s] life over the five

(5) years prior to them filing their petition. The testimony, which pointed towards dependency occurred more than a year and one-half prior to the Jarboes' filing their petition. For example, no evidence was presented that the utilities where [R.A.R] was residing were terminated since he lived at 412 Maple Street. He last lived at 412 Maple Street in May of 1995. This was also the last time there were occasions when no food was in the home.

It should also be noted the incident of abuse of Ruth by Russell took place over five (5) years before the last hearing or four (4) years before the Jarboes filed their petition. The utility services were disconnected from the home is in excess of three (3) years prior to the Jarboes' filing their petition. Based on the age of these incidents, they have little relevancy to whether or not [R.A.R.] is presently dependent.

The testimony as to [R.A.R.'s] current parental care and control indicated that the home in which he was residing with his mother and step-father, Kenneth Erb, contained the necessary utility services and food. [R.A.R.] was being appropriate[ly] supervised and his education needs were being met. Therefore, [R.A.R.] was not dependent at the time of the hearings, and the trial court's decision should be affirmed.

Appelee's brief at 10-11 (citations omitted).

Having found each of appellants' arguments devoid

of merit, we affirm the Orders denying relief.[4]

Order affirmed.

Judgment Entered.

/s/ Prothonotary
Date: *DEC 13 2002*

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[4] On June 4, 2002 this Court ruled appellants to show cause why the appeal filed at 447 MDA 2002 should not be dismissed as interlocutory. In light of our resolution of all issues before us, the issue of the interlocutory nature of the appeal is now moot. Also with regard to 447 MDA 2002, appellants filed a "Supplemental Memorandum Regarding Newly Acquired Documentary Evidence of Lower Court's Admission that Appears to Indicate Unacceptable Unconstitutional Bias Regarding Appellants" on September 16, 2002. This appears to be an additional brief filed in support of appellants' contention Judge Tylwalk was biased and should recuse himself. The supplemental memorandum was considered and the arguments therein rejected by this panel.

J. A34045/02

RUSSELL A. READ	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
V.	:	
RUTH E. READ	:	
APPEAL OF: CARL J. AND ABIGAIL E. JARBOE	:	No. 447 MDA 2002

ORDER OF COURT

The Court hereby DENIES the application filed December 23, 2002, requesting reargument or reconsideration of the decision dated December 13, 2002.

PER CURIAM

DATE: February 13, 2003

TRUE COPY FROM RECORD
Attest: 2-13-03

/s/ P. Whittaker
Chief Clerk – Superior Court of PA
Middle District

APPENDIX C

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CARL J. JAROBE AND ABIGAIL E. JARBOE,	:	No. 124 MAL 2003
Petitioners	:	Petition for Allowance of Appeal from the Order of the Superior Court
v.	:	
RUSSELL A. READ AND RUTH E. READ Respondents	:	

ORDER

PER CURIAM

AND NOW, this 11th day of June, 2003, the Petition for Allowance of Appeal is hereby DENIED.

SEAL OF THE SUPREME COURT
OF PENNSYLVANIA

TRUE & CORRECT COPY
ATTEST: JUN 11 2002

/s/ SHIRLEY J. PHIPPS
APPELLATE CLERK

APPENDIX D

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY PENNSYLVANIA

JUVENILE DIVISION

CARL J. JARBOE and	:	
ABIGAIL E. JARBOE,	:	
Petitioners	:	
	:	
In the Interests of	:	**NOS. 1997-35038**
RYAN A. READ and	:	**1998-35012**
ALEXANDER L. MANN,	:	
Minors	:	

APPEARANCES:

CARL J. JARBOE and ABIGAIL E. JARBOE, Petitioners	Pro Se
RUTH E. ERB, natural parent	Pro Se
ROGER L. MANN, natural parent	Pro Se
LOREEN M. BURKETT, ESQUIRE Law Guardian	For Alexander L. Mann
JON F. ARNOLD, ESQUIRE Law Guardian	For Ryan A. Read

OPINION, TYWALK, J., JANUARY 24, 2002.

Before the Court are two separate dependency actions. The actions were originally pursued separately but have been consolidated for disposition. * * *

A complicating factor throughout these proceedings has been that Petitioners and Respondents have appeared *pro se*. The only counsel involved have been those appointed as Law Guardians for the children. One of the named Respondents, Russell Read, never appeared at any of the hearings even though he was notified on each occasion of those hearings.

The hearings in this case stretched over eleven months, involving twelve days and over thirty witnesses. The transcripts of the proceedings total in excess of 1,700 pages. Nearly 250 exhibits were identified and admitted, many of them involving multiple pages of information for our consideration. The Petitioners and counsel have submitted nearly 800 proposed Findings of Fact for our consideration. No proposed Findings were filed by any of the parents.

We have conscientiously reviewed all of the transcripts and exhibits, as well as, each of the Proposed Findings. Due to the nature of the proceedings and their importance, our findings will be extensive.[1]

FINDINGS OF FACT

* * *

2. On March 2, 1998, Carl J. Jarboe and Abigail E. Jarboe filed a Petition alleging Ryan A. Read is a dependent child.
3. The Jarboes are adult individuals who reside at 416 Maple Street, Lebanon, Lebanon County, Pennsylvania.

* * *

5. Ryan A. Read is a minor child who was born on August 16, 1991.
6. Ruth E. Erb is the biological mother of both Alexander and Ryan. Russell A. Read is the biological father of

---

[1] In many instances each of the parties have made a request for a finding as to the same issue or testimony. We have attempted to avoid repetition when such dual requests have been made. In addition we would note that the requests, like the testimony, do not always follow chronologically.

Ryan A. Read.

* * *

9. David Witherson is the half-brother of Alexander Mann.

* * *

12. Russell Read and Ruth Erb were divorced in 1996. (N.T. 33, 2/24/98).

* * *

15. At the time of the hearing, David was living with Alex, Ryan, his mother, his stepfather, Kenneth Erb, and his stepsister, Mia. (N.T. 39, 2/24/98).

* * *

23. Ruth Read married Kenneth Erb on January 28, 1998. (N.T. 46, 2/24/98).

* * *

26. While living on Maple Street, Ruth Read Erb worked at various locations including Country Apple, Farmer's Wife, Frystown Truckstop, the Hershey Country Club, Country Fare Restaurant, Harper's Tavern, the Hearth, Lyndon's Diner, and the Top Diner. (N.T. 49-54, 2/24/98).

* * *

29. While living on Maple Street, David also performed other household duties as follows: laundry; grocery shopping; washing dishes; housecleaning; cleaning the cat litter box; feeding and cleaning up after the dog; filling the tub for his mother's bath. (N.T. 55-56, 2/24/98).

* * *

32. David complained to Abigail Jarboe about the amount of housework he had to do. He complained because he did not like to do it. (N.T. 58, 2/24/98).

33. David had numerous unexcused absences from school and his mother was fined as a result. (N.T. 58, 2/24/98).

* * *

45. When one of the utilities was turned off at the home, it

was generally only for one day and never for an extended period of time. (N.T. 120, 2/24/98).

* * *

49. When Alex lived at Harry Root's and Tammy Herr's, Ryan stayed with the Jarboes. (N.T. 156, 2/24/98).
50. Ryan slept most of the time at the Jarboe's home when his mother, Alex and David lived with his grandmother. (N.T. 160, 2/24/98).

* * *

75. When the family lived at Harry Root's house Ryan slept overnight at the Jarboe's much of the time. (N.T. 28, 4/16/98).
76. Ryan was sleeping at the Jarboe's when the family lived with Tammy Herr in Annville. (N.T. 29, 4/16/98).
77. Ryan slept at the Jarboe's most of the time while the family lived with Alex's grandmother. (N.T. 29, 4/16/98).
78. During the years prior to the hearing, Ryan frequently ate meals at the Jarboes' house and the Kreider's house. (N.T. 64, 4/16/98).

* * *

97. Ruth Erb's prior husband, Russell Read, had a drinking problem during their marriage. (N.T. 132, 4/16/98).

* * *

99. Lebanon County Children and Youth Services threatened to remove Ryan from his mother's home if she allowed Mr. Read to return to the home following the filing of the PFA Petition. (N.T. 135, 4/16/98).
100. When Ruth and Kenneth Erb were married in January of 1998 they spent three days in Atlantic City. (N.T. 143, 4/16/98).
101. During that time David Witherson and Mia Erb were taking care of Ryan and Alex, and had a telephone number where the Erbs could be reached in Atlantic City. (N.T. 143, 4/16/98).
102. Ruth Erb's brother, Charles Witherson, also stopped by the house during this time to make sure the children

were okay and to take them to and from school. (N.T. 42, 4/16/98).

103. Ruth Erb permitted her children to be with her friend, Scott Mentzer, even though she was aware of Mentzer's criminal record, as she felt his record had nothing to do with how he treated her children. (N.T. 135, 4/16/98).

104. Ruth allowed Alex to ride in a car that Mentzer was driving even though she was aware of the possibility that Mentzer did not have a driver's license. (N.T. 157-159, 4/16/98).

* * *

113. Kenneth Erb, the stepfather of Ryan and Alex, completed an alcohol counseling program at New Perspectives after his DUI arrest, including an additional six months of counseling thereafter. (N.T. 48, 4/17/98).

* * *

118. Mr. Erb met his wife through David Witherson and his daughter, Mia, who are boyfriend and girlfriend. (N.T. 55-57, 4/17/98).

* * *

120. Kenneth, Ruth, David and Mia all smoke cigarettes in the house when the children are present. (N.T. 68, 4/17/98).

* * *

128. Mia Erb helped care for Alex and Ryan in the months immediately preceding the hearing. She would wake them up, help them get ready for school, make sure they got to school, supervise their homework, made sure they ate and that they got to bed at their set time. (N.T. 112-113, 4/17/98).

* * *

133. Debbie Talbot watches the children for short periods of time after school and she has never mistreated Alex or Ryan. (N.T. 187, 4/17/98).

* * *

165. Laycene Kreider was Ruth Erb's landlord and lived

next door to her from 1992 through 1995. (N.T. 124-125, 7/30/98).

166. On one occasion Mrs. Kreider took Ryan and his mother to the hospital because Ryan drank some citrus cleaning liquid. Ryan was young and using a walker at the time. (N.T. 128, 7/30/98).
167. On one occasion Mrs. Kreider saw David and Alex playing in the yard and saw David throw Alex to the ground. Alex was crying after the incident and Mrs. Kreider was afraid he would not be able to walk. (N.T. 130, 7/30/98).
168. Deborah Talbot babysat for Alex and Ryan when they lived at Walnut Manor and occasionally after they moved from that location. (N.T. 137, 138, 7/30/98).
169. Deborah Talbot had previously pleaded guilty to Endangering the Welfare of Children as a result of a firecracker accident. (N.T. 139-140, 7/30/98).

* * *

172. Russell Read, Ryan's natural father, has a history of drug and alcohol problems. (N.T. 152, 7/30/98).
173. Russell Read lives in Ohio and Ryan visits him twice a year. (N.T. 153-154, 7/30/98).

* * *

179. Russell Read was notified three times by General Public Utilities that there was a possibility of his utilities being terminated and the electriciy was turned off on one occasion. (N.T. 95, Exhibit 95, 10/1/98).
180. Ruth Read and her family moved into the Jarboe's neighborhood in approximately March of 1992. (N.T. 108, 10/1/98).

* * *

184. In August or September of 1993, Ruth Erb asked Mrs. Jarboe if she would be willing to babysit Ryan. Mrs. Jarboe agreed to do so refusing to accept payment for doing so. (N.T. 111, 10/1/98).
185. The Jarboes claim Ryan spent more than fifty percent of his time at their home during the time they were caring

for him. (N.T. 111-112, 10/1/98).

186. The Jarboes took David, Alex and Ryan with them to California in November of 1994. (N.T. 115, Exhibit 33, 10/1/98).

187. Ruth Erb gave Abigail Jarboe a key to her house so that Mrs. Jarboe could come into the home, wake up the children and get them ready for school. (N.T. 118, 10/1/98).

* * *

192. On April 16, 1996, the Jarboes went to pick up Ryan because he was unable to wake his mother. (N.T. 129, 10/1/98).

* * *

204. When Ruth Erb lived on Maple Street, there was one house between the Erb house and the Jarboe house, with a distance of 36 to 50 feet between the residences. (N.T. 10, 12/16/98).

* * *

206. Ryan was treated at Good Samaritan Hospital on August 4, 1993 and August 27, 1993. One incident involved Ryan allegedly drinking a cleaning solution and the other was an incident in which Ryan's father hurt him. (N.T. 21, Exhibit 69, 12/16/98).

207. Ruth Erb contacted Mrs. Jarboe and asked her to go to into the hospital and stay with Ryan while he was there in August of 1993. (N.T. 21, 12/16/98).

208. Mrs. Jarboe signed Ryan out of the hospital and took Ryan to her home where she and her husband cared for him while he was taking medications. The Jarboes paid for the medications. (N.T. 22, Exhibits 240A and 240B, 12/16/98).

209. Abigail Jarboe agreed to watch Ryan in August or September of 1993 to relieve David of the pressure and insure that Ryan had adequate care. (N.T. 25, 12/16/98).

* * *

211. Ryan frequently slept at the Jarboe's home from 1993

through the end of May 1995. (N.T. 30, 12/16/98).

212. There were times when Abigail Jarboe woke the children up to get them ready for school because Ruth and Russell did not wake up in time to get them ready, Ruth was working nights and needed to sleep, or Ruth was up, and watching television and did not wake the children up. (N.T. 30, 12/16/98).

213. During the time Abigail Jarboe took care of Ryan, Ruth would not call for extended periods of time. (N.T. 33, 12/16/98).

214. Even when Ruth lived only three blocks away, she would let Ryan stay at the Jarboes for extended times and not see or call him for as long as a week. (N.T. 33, 12/16/98).

* * *

218. From August of 1993 through August of 1996 Ryan frequently slept at the Jarboe's home, and they provided food, clothing, diapers, boots, etc. for him while he was there. (N.T. 51, 12/16/98).

* * *

222. During the California trip, David constantly did things to annoy Alex and Ryan, causing Alex to cry and spanking Ryan when Ryan had not misbehaved. (N.T. 73, 75, 12/16/98).

223. In October of 1993, the Jarboes took the three boys to the Philadelphia Zoo. On the trip David smacked Ryan in the face causing him to cry. (N.T. 76, 12/16/98).

224. The Jarboes sought custody of Ryan because they did not feel he was safe in David's care. (N.T. 78, 12/16/98).

* * *

229. Mrs. Jarboe saw a change in Ryan's behavior during the time when the Jarboes had partial custody rights. When Ryan first got to their home he would seem depressed, but he would become happy and loving the longer he was with them. (N.T. 109, 12/16/98).

* * *

244. The Jarboes provided boots for Ryan one winter and provided snow suits for him as well. His mother had bought Ryan a snow suit but it was lost after it was lent to a friend. (N.T. 150, 12/16/98).

* * *

248. Normally when Ryan stayed at the Jarboes', he did not ask to return to his mother's, did not ask to call and did not ask where Ruth was or what she was doing. (N.T. 157, 12/16/98).

* * *

250. The Jarboes took Ryan to Awana, a Bible cubbies program for children. (N.T. 159, 12/16/98).

251. The Jarboes took Ryan to Sunday school and church every weekend they were allowed to do so. (N.T. 163, 12/16/98).

252. Marian Darkes lives approximately three houses from the Jarboes and knew them for ten years at the time of the hearing. (N.T. 14, 12/17/98).

253. Mrs. Darkes saw Ryan with the Jarboes and saw the Jarboes playing with children in their backyard, where they had children's swings and other activities. (N.T. 14-15, 12/17/98).

254. Mrs. Darkes saw children's clothing on the Jarboe washline. (N.T. 15, 12/17/98).

255. Mrs. Darkes attended a birthday party the Jarboes had for Ryan. (N.T. 16, 12/17/98).

256. Mrs. Darkes saw Ryan interacting with the Jarboes and he seemed comfortable with the Jarboes caring for him. (N.T. 16, 12/17/98).

257. The Jarboes took Ryan and other neighborhood children to the playground. Mrs. Darkes never saw Ruth do the same. (N.T. 18, 12/17/98).

* * *

259. During some period of time, Ruth told the Jarboes she had very little food in the house, so the children went to the Jarboes' to eat. (N.T. 28, 12/17/98).

260. Ruth Read Erb signed a form authorizing the Jarboes to

make medical decisions for Alex and Ryan because Mrs. Jarboe frequently cared for them. (N.T. 30-32, Exhibit 90, 12/17/98).

261. Ruth's mother-in-law gave the Jarboes a booklet that explained what medical benefits the children had. (N.T. 32, 12/17/98).

262. From September 23, 1994 through November 3, 1994, Ryan frequently was at the Jarboes during the day and overnight. (N.T. 34-39, 12/17/98).

* * *

265. On October 10, 1994, at about 1:00 P.M., Mrs. Jarboe found Ryan screaming in the alley behind their homes. Ryan told her he had not eaten and that he wanted to go with her and did not want to go back to his mother. (N.T. 40, 12/17/98).

266. After the October 10th incident Mrs. Jarboe took Ryan to his mother. Ruth Read permitted Ryan to go with Mrs. Jarboe for lunch and to stay at the Jarboe home overnight. (N.T. 40, 12/17/98).

* * *

268. The Jarboes cared for Ryan in February of 1995 while his mother was working. They often cared for Ryan for a period in excess of his mother's work hours. (N.T. 45-46, 12/17/98).

* * *

281. Mrs. Jarboe saw a water termination notice posted on the Read house on Maple Street and on one occasion when she was at the house babysitting there was no water when David turned the faucet on. (N.T. 116, 12/17/98).

282. Kenneth Weaver is the elementary school principle in the Northern Lebanon School District and confirmed that Ryan was a student there at the time of the December 1998 hearing. (N.T. 116, 12/17/98).

283. Ryan was a student in the District from September 1, 1998 through the December hearing dates. (N.T. 128, 12/17/98).

284. During this period Ryan was tardy on ten occasions with the amount of time varying from five minutes to thirteen minutes. (N.T. 128, Exhibit 270, 12/17/98).

285. Mrs. Erb was sent a letter from the District advising her that continued tardiness would result in an unexcused absence for Ryan. The letter was sent December 16, 1998. (N.T. 128, 12/17/98).

* * *

291. Compared to other students, the number of times Ryan was tardy was more than normal, the average being about two or three times. (N.T. 141, 12/17/98).

* * *

319. After Ruth Read Erb moved from Maple Street, she lived with four different individuals. During each, Ryan spent most of his time in the physical custody of the Jarboes. (N.T. 209, 12/17/98).

320. After Ruth moved into her own apartment in Myerstown, Ryan continued to spend more than fifty percent of the time with the Jarboes. (N.T. 209, 12/17/98).

* * *

326. Russell Read broke Ruth's nose during an incident while they lived on Maple Street. (N.T. 44, 12/18/98).

* * *

328. Ruth was aware of Russell's tendencies to be violent. (N.T. 46, 12/18/98).

329. Ruth allowed Ryan to go visit his father in Ohio for a week during June of 1998. (N.T. 47, 12/18/98).

330. Later Ruth agreed to extend the visitation period until August 16, 1998. (N.T. 49, 12/18/98).

* * *

337. Vicky Engle is a neighbor of Ruth's who transported Ryan to school. Ruth never asked if she had a driver's license or a criminal record. (N.T. 70, 12/18/98).

* * *

340. Ruth is aware of only one suspension of Russell's driver's license. His license was suspended for speed-

ing. (N.T. 88, 12/18/98).

341. Since December of 1996 Ruth was aware that Scott Mentzer did not have a driver's license. (N.T. 95, 12/18/98).

* * *

372. Abigail Jarboe is known in the community as an honest and truthful person. (N.T. 54, 12/17/98).

* * *

374. Michelle Johnson, a home study caseworker, found a substantiated record of child abuse against Russell Read in the Children and Youth files. (N.T. 65, 7/30/98).

375. While living on Maple Street, Ruth believed Russell had a drinking problem, but he was not abusing illegal drugs at that time. (N.T. 132, 4/16/98).

376. Russell's certified driving record shows that he had his license suspended two times, once for a DUI conviction and once for his placement on ARD for a DUI charge. (Exhibit 247).

* * *

383. Charles Witherson was convicted of Disorderly Conduct as a result of an incident in which he pushed Carl Jarboe into the Jarboe's car. (N.T. 120-122, 12/16/98).

384. Witherson has also been convicted of Harassment and Stalking and was court ordered to attend anger management counseling. (N.T. 85-92, 10/1/98).

385. Witherson has been the subject of numerous Protection From Abuse orders. (N.T. 137-142, 4/16/98).

386. Ruth Read Erb let David skip school and travel to North Carolina with Scott Mentzer. During the trip Mentzer was drinking alcohol while driving. (N.T. 153, 4/16/98).

387. Alex testified that Mentzer was drinking beer on one occasion when Alex rode with him. (N.T. 246-247, 2/24/98).

388. Ruth was also aware of the fact that Mentzer had a criminal record involving the use of drugs. (N.T. 154,

4/16/98).

389. Ruth knew that Mentzer had been in jail for two years prior to letting Alex go with him in a vehicle. (N.T. 156, 4/16/98).

390. Ruth used a Vicki Engle as a babysitter for the children. A person named "Vicki Engle" was found guilty of Harassment in the Court of Common Pleas of Lebanon County for shouting obscenities at a man and throwing rocks at a dog.

DISCUSSION

The law to be applied to this case is set forth at 42 Pa.C.S.A. §6302 which details ten different and distinct circumstances in which a child can be determined to be a "dependent child." The Jarboes are pursuing these actions under one of the definitions which states a dependent child is one who:

> Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's of other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk.

42 Pa.C.S.A. 6302.

* * *

The primary focus of the parenting criticism, due to the circumstances of this family, has been the boys' biological mother, Ruth Read Erb. Ryan's father lived out of state while the hearings were being held and despite being noti-

fied of each proceeding, chose, for whatever reason to be a non-participant. Based on what we heard that did not strike us as unusual because it would appear that is how he approached his responsibilities to Ryan. * * *

RUSSELL READ AS A THREAT TO RYAN'S PHYSICAL SAFETY

Petitioners asserts Russell Read poses a physical threat to Ryan's safety. They base this conclusion on a number of things including Russell's use of alcohol and drugs in the past, the fact that he has had DUI convictions in the past and finally, due to the fact that there was a substantiated finding of abuse of Ryan in the records of Lebanon County Children and Youth. Although the facts referred to are part of the record of this case, we do not believe they support the conclusion reached.

We did hear testimony as to Russell's past history of drug and alcohol use, but heard nothing of any recent incidents. Since shortly after his divorce from Ruth, Russel has lived in Ohio and he did not appear at the hearings. There is no testimony of recent origin from which we can conclude that Russell is currently abusing drugs or alcohol. Petitioners want us to assume the negative – since there is no testimony that Russell is no longer addicted, we should assume that he is. We will not do so.

* * *

Concerns were raised about the medical and dental care provided for the boys. At times it is clear that Ruth permitted others to aid her in seeking or providing such care for the boys, even to the extent of permitting others to take one of the boys to the hospital to receive care that was needed. We do not condone such behavior, but like so much of what we heard that was negative as to Ruth, it had occurred in the past and no testimony supported that those same circumstances were in existence at the time of the hearings.

As another example, we would agree that after the family's initial move from Maple Street, Ruth had difficulty in establishing a stable residence. She lived with friends and family members and it took several years until she gained stability. Yet, at the time of the hearings she, and the children, were in a stable environment with her new husband. During the period of instability it is true that both younger boys, but especially Ryan, spent significant periods of time with Petitioners. Instead of viewing this as a negative as to Ruth, one might see it as a positive recognition on her part that Petitioners provided a safe and loving environment for her children when her circumstances were unsettled. That is how we view it.

RYAN'S "ATTACHEMENT" TO PETITIONERS

Petitioners have argued that they believe Ryan has become emotionally attached to them and that we should determine that he is a dependent child because of this. They claim he is experiencing emotional difficulties while in his mother's home that his educational development has suffered, that Ryan wants to live with them, that the moral environment in Ruth's home is inappropriate and that Ryan is afraid of angering his mother if he reveals his true feelings about her and them. We find these arguments to be unpersuasive as they relate to the dependency issue.

We view this type of testimony as a backhanded attempt to turn the dependency proceedings into custody proceedings.[7] Many, if not all of this conglomeration of circumstances, relates to what would be the appropriate home for Ryan to live in if this were a custody case. We would not even reach such concerns in the dependency context. We do not discount them, we just do not view them as relevant.

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[7] We use the plural "proceedings" even though Petitioners arguments focus solely on Ryan and do not include Alex.

CONCLUSION

* * *

We believe that Petitioners, even though they may have failed to convince us that the children are dependent, have served a useful function in this case. We believe Ruth Read Erb has regained her focus, if you will, in terms of the need to provide a proper home environment for her children. We believe that in the past she was satisfied often to let others, and when she lived on Maple Street many times it was the Petitioners, to fulfill what truly were her parental duties. From providing care, to feeding, to washing clothes, to homework, to making sure dental and medical care was provided – she abdicated each of these functions to others. We believe she was a woman who was perhaps overwhelmed with the responsibility, and who was unable, or unwilling, to fulfill it on her own. As we said, we believe she has regained her focus.

* * *

In making positive comments about Petitioners, we are in no way pandering to them. In this case we believe they had a heartfelt but mistaken concern about the children. They enjoyed a surprisingly open access to the children, in particular Ryan, and when that access ended, we believe they pursued what they thought was right. The Jarboes spent much time with the younger boys and had fulfilled many parental functions with regard to them. They had helped feed and clothe them, cared for them and even took them on extensive vacations. The Jarboes' concern and love for the boys is genuine.

* * *

Although the boys have benefited from the past care and unconditional love of the Petitioners, we are confident that Alex and Ryan are now in a safe, loving environment where their needs are met.

CONCLUSIONS OF LAW

* * *

2. The Record does not support an adjudication of dependency in regard to Ryan Read.

* * *

4. The Dependency Petitions filed by the Jarboes should be dismissed.

APPENDIX E

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA
CIVIL ACTION – DOMESTIC RELATIONS SECTION

CARL JARBOE AND ABIGAIL JARBOE,	:	
Plaintiffs	:	
	:	
v.	:	**No. 95-20748**
	:	
RUTH E. READ,	:	
Defendant	:	

APPEARANCES:

Adrienne Snelling, Esquire	**For Ruth Read**
Sullivan, Sullivan & Snelling	
CARL JARBOE	*Pro Se*
ABIGAIL JARBOE	

Opinion by Eby, P.J., May 19, 1997

In this case, we must determine whether persons who are not blood relatives of a child have standing to bring a custody action respecting the child. We will recount the background of this case briefly before proceeding to the facts adduced by the parties during hearings.

Plaintiffs, Carl and Abigail Jarboe, are former neighbors of Defendant/Mother, Ruth E. Read. Defendant/Mother is the divorced mother of three children, one of whom is Ryan Read. Plaintiff Abigail Jarboe cared for Ryan on various occasions between 1993 and 1995 while Mother was working outside the home. In 1996, Plaintiffs filed the instant custody action, alleging that Ryan's best interests would be served by removing him from Mother's care and

placing him in their home. Mother challenges Plaintiffs' standing to bring the custody action, arguing that since Plaintiffs are not Ryan's blood relatives, they have no rights vis-a-vis Ryan. Plaintiff Abigail Jarboe states that she and her husband stand *in loco parentis* to Ryan, and so have standing to ask us to place him in their care.

We begin by noting that the blood relationship between child and custodian always has been considered in our society to be of great importance. In *Ellerbe v. Hooks*, 490 Pa. 363, 416 A.2d 512 (1980), the Supreme Court stated:

> [T]he blood relationship of parenthood has traditionally served and continues to serve as our society's fundamental criterion for allocating control over and responsibility for our children, and . . . without some showing of harm, the court should not interfere with that arrangement.

490 Pa. at ___, 416 A.2d at 514-15.

A number of cases address the issue of standing in custody matters; we shall first examine *Ken R. on behalf of C.R. v. Arthur Z.*, ___ Pa.Super. ___, 682 A.2d 1267 (1996), and *Weber v. Weber*, 362 Pa.Super. 262, 524 A.2d 498 (1987); *allocatur granted* 531 A.2D 431.

In *Weber*, the adult sister of a minor child petitioned for partial custody of the child, alleging that because the child's parents disapproved of her lifestyle, they refused to allow the child to visit her. The Superior Court stated:

> The right to raise one's children has long been recognized as one of our basic civil rights. Freedom of personal choice in matters of family life, and the concomitant freedom from unwarranted governmental intrusion, is a fundamental liberty interest protected by the Fourteenth Amendment. For these reasons, governmental intrusion into the family is warranted only in exceptional circumstances. The statutory bases for court interference with the parents'

> right to custody are limited and specific, reflecting that philosophy. *See*, 11 P.S. § 2208 (taking an abused child into protective custody); 23 Pa.S.C. § 301 (custody and visitation rights between parents in a divorce action); 23 Pa.S.C. § 2511 (involuntary termination of parental rights); 23 Pa.C.S. § 5311-5313 (grandparents visitation); 42 Pa.S.C. § 6351, 6352 (disposition of dependent and delinquent children).

362 Pa.Super. at ___, 524 A. 2d at 498-99 (citations omitted). The Court concluded that a sister has no standing under Pennsylvania statutes to seek partial custody or visitation with a minor sibling.

In *Ken R.*, a petition was filed on behalf of a minor for visitation with her half-sisters. The Superior Court, as in *Weber*, held that Petitioner had no standing to seek the relief requested, stating:

> [A]n immediate interest is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question . . . . There is no provision in the statute for protecting C.R.'s interest, that is maintaining her relationship with her sisters. Thus, C.R.'s interest does not fall within the zone of interests that the statute seeks to protect.

___ Pa.Super. at ___, 682 A.2d at 1270. The Court repeated its *Weber* holding that under Pennsylvania law, a sister has no standing to seek visitation with a sibling, and suggested that the legislature examine this issue.

In *Dorsey v. Freeman*, 438 Pa.Super. 236, 652 A.2d 352 (1994), the Superior Court was asked to review a trial court's determination that the natural father of a child should have custody instead of the child's grandmother. The Court stated:

> In a custody dispute between a parent and a non-parent, the non-parent bears both the burden of persuasion and the burden of production concerning evidence. The non-parent's evidentiary burden is a heavy one as the scales are "tipped hard" in favor of the parent.

438 Pa.Super. at ___, 652 A.2d at 353 (citations omitted).

The Superior Court has also addressed cases in which a person seeking custody or visitation has no blood ties to the child. In *Kellogg v. Kellogg*, 435 Pa.Super. 581, 646 A.2d 1246 (1994), the Superior Court held that a step-mother, when she had shown a "sustained, substantial and sincere interest" in the welfare of her ex-husband's children, had standing to challenge the children's step-grandparents for custody. The Court stated:

> The question becomes then, whether the evidence here was sufficient to establish that (step-mother) showed a sincere and sustained interest in the boys. The record reveals that she did. She sought to foster a healthy relationship between the boys and her own children, despite the fact that she was divorced from Bruce, their father. She saw the boys on a regular basis when picking up her own children after school. She played with the boys in their home on a regular basis. (Step-mother's) testimony regarding her relationship with the boys, which was credited by the court, supports a finding by clear and convincing evidence that she has always shown and continues to show a genuine interest in the welfare of these children. It was indeed proper, therefore, for the trial court to accord (step-mother) standing in this custody action.

Id. at ___, 646 A. 2d at 1250-51.

In *In re Adoption of Baby Boy Wims*, ___ Pa.Super. ___, 685 A.2d 1034 (1996), the Court held that persons who are

not related to a child must establish that they stand *in loco parentis* to the child before they can be found to have standing to seek custody. The Court quoted an earlier case, *Cardamone v. Alshoff*, 442 Pa.Super. 263, 275, 659 A.2d 575, 581 (1995):

> The phrase "in loco parentis" refers to a person who puts himself in the situation of assuming the obligations incidental to the parental relationship without going through the formality of a legal adoption. The statue of "in logo parentis" embodies two ideas: first, the assumption of a parental status, and second, the discharge of parental duties.

In *Wims*, the natural mother of the child had placed her baby with an adoption agency, and the plaintiffs had enjoyed temporary custody as foster parents while the agency sought suitable adoptive parents. When the baby was placed with his adoptive parents, the foster parents sued for the right to adopt. The Superior Court held that the foster parents stood *in loco parentis* during their period of custody, but lost their status when the baby left their care. The Court held that at the time they filed their petition, the foster parents did not stand *in loco parentis*, and overruled the lower court's refusal to dismiss the foster parents' petition to adopt.

In *J.A.L. v. E.P.H.*, ___Pa.Super.___, 682 A.2d 1314 (1996), the Superior Court was asked to determine whether the domestic partner of a child's mother had standing to seek partial custody of the child after the partnership broke up. The Superior Court examined the history of the parties' relationship, noting that the child's mother had signed papers nominating her partner as the child's guardian in the event she could not care for the child. The Court also noted that domestic partner had participated in the decisions which culminated in the child's birth, and had assisted in the artificial insemination process. The Court, stating that since the child had lived with the domestic partners from birth

until the breakup, the child's mother intended from conception that her partner stand *in loco parentis*, and the child had formed strong emotional bonds with the woman seeking partial custody, held the woman seeking partial custody had standing to do so.

We turn to the evidence adduced by the parties in the instant matter in two days of hearings on the standing issue.

The evidence was that Mother lives in Myerstown, Pa., with her three children and their grandmother. David is a teenager, Alex is 10 and Ryan is about 5 years old.[1] Mother is divorced, and works part-time as a waitress at a local restaurant.

Mother testified that in 1992, she, her husband and their children moved into a house near the Jarboe home in Lebanon, and that Plaintiff Abigail Jarboe immediately became interested in David (N.T. 12/30/96 pp.66, 120-21). Later, when Plaintiff offered to baby-sit for Ryan while Mother was working, Mother allowed Plaintiff to care for Ryan (N.T. 12/30/96 p. 68). Mother gave Plaintiff a house key so that Plaintiff could obtain diapers, food and clothing for Ryan, and Plaintiff began using the key to visit Mother's home after David and Alex came home from school (N.T. 12/30/96 p.68).

During this time, Mother testified, she and her husband had problems, and Father was drinking. Father eventually left the household, and Mother began working longer hours, allowing Plaintiff to care for Ryan for longer periods (N.T. 12/30/96 p.71). Plaintiff began to keep Ryan overnight, and when Mother was able to care for Ryan upon her return from work, Plaintiff often told Mother that Ryan was asleep, and returned him to Mother's care in the morning (N.T. 12/30/96 p.72).

After Ryan's father left the household, Mother moved away from Plaintiffs' neighborhood, eventually settling in Myerstown. Plaintiffs continued to assist Mother

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[1] The parties never adduced evidence on the children's ages.

in caring for Ryan.

Mother testified that Plaintiff disagreed with Mother's belief that it was better for Ryan for him to be in the public school system rather than "home school." Mother stated Plaintiff believed Ryan should be home-schooled until he reached the age of 8 (N.T. 12/30/96 p.82). Mother testified that she believed her decision to enroll Ryan in the public school system precipitated Plaintiffs' present custody action.

Immediately prior to filing the instant custody action, Plaintiff Abigail Jarboe sent the following letter to Mother:

> Very important
>
> Dear Ruthie: 8/17/96
>
> I would like to have custody of Ryan so I can home school him and so David isn't babysitting him. I love David as if he was my own son and I love him no matter what he does or how he acts; but I have seen him mistreat Alex and I have pictures of what David did to my arm. Also, recently on the way to your house when Elizabeth said she wanted to see David, Ryan asked her if she wanted to get beat up. When I asked Ryan if David beats him up, Ryan said that David kicks him and that it hurts. I asked him if he tells you and he said that sometimes he does and that you yell at David to stop. No little boy should have to put up with this.
>
> I am also concerned because Ryan told me that he and Alex were playing that David's bed is the "sex bed" and they were laying there under blankets pretending there were naked women there. Put that together with the fact that Alex was accused of sexually molesting Tammy's daughter and that for years I saw Alex walking around holding his penis through his clothes and I feel there is cause for concern.
>
> As soon as I get home from California I

would like time with you, David, and Alex without any company to discuss my concerns and possible solutions. If you have Ryan start kindergarten, that means that you would have David babysitting him while you are working. Ryan has told me that David does not like him and that David thinks he is a punk and a brat and a crybaby. I know from what David has told me in the past that David has resented having to take care of Ryan. Over the years I have seen you push a lot of the care of Ryan down on to David. That is part of why I agreed to babysit Ryan when you asked me to. I told Ryan long ago that if David babysits him, I am going to court for custody of him. I don't want to do anything that would hurt you or Alex or David and if I have to go to court it is going to be embarrassing for all of you, because I will be subpoenaing utility payment records, driving records, tax payment records, school attendance records, court records, Tammy and her mother, etc., the Lord willing. Last year Tammy offered to testify if I went to court for custody of Ryan.

Even when you are not working, you are often not at home. You've had Ryan stay overnight at Lee's house and you've had Lee babysit Alex. I checked the criminal records for C—— L—— and found a C——— L—— who had a criminal record of passing bad checks. Ages and residence made it appear that it is probably your friend. I have concerns about what other men you will be bringing into Ryan's life. His father had a drug problem and you told me that Alex's father has a drinking problem. The reason you have had a lot of the problems you have had is because you have not been obeying the Bible.

I am particularly upset that you disobeyed

the school attendance laws and you let S—— M—— take David to North Carolina when S—— had no drivers license, and was on parole, and had been in jail for drug use. I also have other concerns.

I have done the legal research. I have standing to file for custody of Ryan and to be awarded custody of Ryan.

I have a lot more to say, and have a petition almost ready to file with the court if that is necessary. I hope it will not be necessary. You and I need to talk as soon as possible. When can we?

Love,
Gail

(Exhibit 39) (names omitted).

Plaintiff Carl Jarboe is 58 years old, and the owner of his own business. He and Abigail Jarboe have no children (N.T. 12/20/96 p.74). Plaintiffs served as foster parents to two children between 1970 and 1974, and at the conclusion of their foster parenthood, filed a dependency petition regarding one of the children, asking for continued custody (N.T. 12/20/96 p.75). In addition, Plaintiffs filed a petition for custody of a Cambodian child in 1979 or 1980, while living in Cumberland County (N.T. 12/20/96 p.77, 135, 140). Plaintiffs also petitioned for custody of Plaintiff Abigail Jarboe's niece in 1985 (N.T. 12/20/96 p.140). None of these actions resulted in the placement of the subject children with Plaintiffs.

Plaintiffs bought many items for Ryan to use while he was in their care.[2] They bought household necessities for his use, such as disposable diapers, toothpaste and tooth-

[2] Plaintiff Carl Jarboe stated that if they permitted Ryan to take the items home with him, the items "would get lost" (N.T. 12/20/96 p.43). The items included bicycles, safety helmets, sandboxes, toys, gardening toys, bunk beds, gym sets, and the like.

brushes, and medicine as well. They also paid for Ryan's admission to various places when they took him on day trips and overnight trips (N.T. 12/20/96 p.46, 48, 160). Plaintiff Abigail Jarboe accompanied Ryan on his first trip to the dentist (N.T. 12/20/96 p.55, Exhibit 11). Plaintiffs took Ryan to local photo studios to obtain studio portraits of him and them (N.T. 12/20/96 p.148, Exhibits 27A-G).

Plaintiffs instructed Ryan in their religion.[3] Plaintiff Abigail Jarboe took Ryan to her church and signed papers indicating her guidance activities with him (N.T. 12/20/96 p.93), and received papers showing her participation in his religious education. Ryan helped Plaintiff Carl Jarboe put shock absorbers on Plaintiffs' truck (N.T. 12/20/96 p.58). Plaintiff Carl Jarboe showed Ryan how to use a hammer (N.T. 12/20/96 p.61). The Plaintiffs held birthday parties for Ryan. Plaintiff Abigail Jarboe provided educational materials to Ryan (N.T. 12/20/96 p.156), sex-education materials to Ryan, and engaged in home-school activities with him. Ryan learned how to read with Plaintiff Abigail Jarboe's assistance (N.T. 12/20/96 pp.157, 166).

Plaintiffs also filled out health insurance claim forms respecting Ryan's health care, and submitted them to the insurers who covered his health care (N.T. 12/20/96 p.122). Plaintiffs took splinters out of Ryan's feet, and brought him home from the hospital after he was treated for drinking a cleaning solution.[4]

Plaintiff Carl Jarboe testified that he and his wife always asked Mother for permission before taking Ryan anywhere "major" (N.T. 12/20/96 p.79). Plaintiffs introduced documents showing Mother gave permission for

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[3] Mother testified that once she became aware that Plaintiffs were talking with her children about religion, she told them to stop (N.T. 12/20/96 pp.151-52).

[4] Mother received the cleaning solution as a gift from her landlady, Laycene Kreider (N.T. 12/20/96 p.114). Mrs. Kreider put some of the solution in a baby food container, which apparently had no safety cap, and Ryan accidentally swallowed it.

them to take Ryan and Mother's other children to medical caregivers, to zoos and to other places (N.T. 12/20/96 p.124, Exhibits 14, 18, and 19). Plaintiffs estimated they cared for Ryan between 50 and 70 percent of the time between 1993 and 1995.[5] During the time she cared for Ryan, Plaintiff Abigail Jarboe kept precise records of his food intake and toilet training, measured his height, and computed the amount of time he spent with her.

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[5] Plaintiff Abigail Jarboe said she kept notes of the amount of time Ryan spent at the Jarboe home "[b]ecause Ruth's situation was extremely bad" (N.T. 12/20/96 p.178). Mother's older child, David, also spent time with Plaintiffs. In May of 1995, Plaintiff Abigail Jarboe wrote a letter to Mother respecting David (Exhibit 51):

Dear Ruthie:

This is very important, so please read the whole letter. There is more than one part to this.

First, I was very upset when I was informed that David has been living with S——. I have enclosed copies of part of S——'s criminal record. You yourself told me that S—— is a problem drinker and that you got rid of Russ because he was a problem drinker. The Bible says, "He that walketh with wise men shall be wise, but a companion of fools shall be destroyed." (Proverbs 13:20). Form (sic) what David has said to me (that you said was only kidding) and from S——'s record, it looks to me very likely that David has been using drugs. He is precious to me. I don't want him to end up an addict or in jail. David is too important to God, for me to sit idly by and do nothing while he self-destructs.

Also enclosed is a copy of the report the school faxed to me on Monday. If David does not pass social studies, he will definitely not have sufficient grades to go on to 9th grade next year. Also, Mr. Grier told me last week, that since you moved, David has had such a bad attitude that if it does not improve, he will not let David reamin (sic) at the Middle School. I know that if you tell David to shape up, he will. I am asking you to tell him to come to my house every day after school starting on Thursday and work for 1-2 hours, plus come over on Saturday and work. There are only about 15 more days of school. There are only about 3 weeks of school left, and it (sic) not good for David to fail another grade. While David may complain, I know that if you tell him to do it, he will do it. We can bring him back

Plaintiff testified that she believed that Mother would no longer let her see Ryan after she sent Mother the letter (Exhibit 39), and so she filed the instant custody action. She

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to you when he is done or when you are ready for him.

I love David very, very much, and I miss him very, very much. Not being able to see him and talk to him gets me all upset, particularly when there is evidence that he is doing things that are going to get him into serious trouble. He can (not) get away with doing bad things, because God loves him, and God sees everything he does. Proverbs 3:11-12 says, "My son, despise not the chastening of the Lord; neither be weary of his correction: For whom the Lord loveth he correcteth: even as a father the son in whom he delighteth." Also God has ways of letting me know everything He wants me to know about what David is doing. The Bible says, "For the eyes of the Lord run to and fro throughout the whole earth, to show himself strong in the behalf of them whose heart is perfect toward him."

I spoke with Mr. Grier last night, and he said that David's absence on Monday is another unexcused absence (because there was no doctor's excuse), so it is likely that you will be fined. The reason I asked the school to require doctor's excuses is because you let David go to North Carolina with S——, and I know he drank (sic) and drives. David isn't safe with him, either physically or morally. Please stop letting him skip school. I don't like your having to pay fines, but the amount of the fine is no where near the amount of money I have saved you by feeding David, Alex and Ryan, by taking David to the doctor and buying him clothes last year and a gym outfit this year, by watching Ryan free, and by buying training pants for Ryan, which I have been doing since you said you did not want to pay for the ones he used at my house. Have David obey the school law, and you won't have these problems. Romans 13:1-3 says, "Let every soul be subject unto the higher powers. For there is no power but (of) God: the powers that be are ordained of God. Whosever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil."

I am distressed that watching Ryan kept me from doing something to help David before now. When I have Ryan, I don't have time to investigate what is going on like I do when he is not here. I know all 3 judges. I know the superintendent of schools, and I know the head of child welfare. Please do not try to keep your children

also stated that Mother "usually does not stay home and take care of Ryan" (N.T. 12/20/96 p.171), and that she had others take care of him.[6] Plaintiff stated that "it was obvious that [Mother] was not taking proper parental care of [Ryan], and it became apparent at some point [the Jarboes] might need to go to court for him" (N.T. 12/20/96 p.178). Plaintiff had reported some events in Ryan's life to Lebanon County Children & Youth Services, but was advised that those events did not constitute abuse (N.T. 12/20/96 p.179).

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from talking to me, because when that happens I become convinced that something is going on that shouldn't be. I love your children as if they were my own.

I went to child welfare about Shawn because I heard him screaming that he was going to kill himself; and his mother, when I asked her in a letter to get him some help, would not talk to me. Since there didn't seem to be any way I could personally help him, because of his mother, I influenced child welfare to do something. I have known its head for years and have used him for a witness in court, in the past.

I do not like to involve Child Welfare (Children & Youth Services) and therefore I would only do that as a last resort; but if the time ever comes that I can no longer help David or Ryan or possibly Alex, then the Lord willing, I would leave no stone unturned to get them help.

Last weekend you had mentioned that S—— might be picking Ryan up. Please do not ever send him over here after any of your children. We will be glad to drive them where they need to go. S—— probably does not have a license, and he drinks and drives.

I trust that you will handle these situations, and that it will not be necessary for me to contact anybody else.

Love,
Gail

PS – We have to go away today (Wednesday) and it will probably be late till we get home.

[6] Plaintiff Abigail Jarboe, when asked on cross-examination by counsel for Mother whether she was put on earth to eradicate evil in the world, stated, "No. Put on earth to be a faithful servant of the Lord Jesus Christ, to witness to him, to obey the word of God and to tell other people so they don't end up in hell" (N.T. 12/20/96 p.177).

Plaintiff Abigail Jarboe also testified that she had written to Ryan's father and asked him to give up his parental rights, and that she would not request support payments if he did so (N.T. 12/20/96 p.187). She also testified that she had written another letter to Mother's mother, in which she stated that she was filing for custody of Ryan because Mother insisted on having David babysit Ryan (N.T. 12/20/96 p. 188).[7] Plaintiff stated she did not feel Ryan's best interests were served by his being in Mother's custody (N.T. 12/20/96 p.192).

Mother testified that she did not share parenting decisions with Plaintiff (N.T. 12/30/96 p.73). She testified that Plaintiff dressed Ryan in clothing of Plaintiff's choice when Plaintiff cared for Ryan, and that she changed the clothing when Ryan got home (N.T. 12/30/96 p.74). Mother stated that Ryan went to his first dental appointment with Plaintiff because the appointment conflicted with her work schedule (N.T. 12/30/96), and stated that her children visited a dentist regularly.

Mother testified that she played with Ryan, read to him, toilet-trained him and took him and his brothers to special places like the zoo (N.T. 12/30/96 p.77). She indicated that since Ryan was toilet-trained at the age of 2 1/2 years, there was no need for Plaintiff to buy diapers for Ryan, or for Ryan to use diapers (N.T. 12/30/96 p.77). Mother testified that once she gave the key to her home to

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[7] Pertinent portions of the letter (Exhibit 42) state:

We are not trying to separate Ryan from Ruthie. I am friendly. If the Lord gives us custody of Ryan, she can call him anytime she wants to and she can come over and see him any time she wants to. What we are trying to do is protect him from David (who I have personally seen mistreating his brothers) and from her friends who she uses as babysitters who have criminal records, etc. I was not planning to go to court until Ruth insisted upon using David for a babysitter. I don't believe that David has any interest in babysitting Ryan. He is a young man and needs to be equipping himself to support a wife and family, not be babysitting his little brother.

Plaintiff, Plaintiff abused the privilege, and entered her home "whenever she wanted to" (N.T. 12/30/96 p,78). She also testified that she did not give permission for Plaintiffs to instruct Ryan in their religious beliefs (N.T. 12/30/96 p.152).[8]

Plaintiff Abirgail Jarboe's contention seems to presume that when a child received care she believes is substandard, any person who takes action to care for the child thereby stands *in loco parentis*. At the hearing she said:

> Your Honor, they have been trying to say that the reason that we took action for custody of this child were due to inappropriate motives on our part. The kind of care that she was providing for this child greatly impacts whether or not we were *in loco parentis* to this child because had she been having people care for him that were providing good, adequate care, that had good reputations, there would have been no reason for us to try and get custody of this child.

(N.T. 12/30/96 p.135). Plaintiffs are mistaken in their analysis of the status of this area of the law.

In Pennsylvania, for purposes of custody litigation, an unrelated adult who has never been intimate with a

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[8] At the hearings, Plaintiff Abigail Jarboe stated:

A major aim of my life is to promote Jesus Christ, is to promote the fact that the Bible says that except a man be born again cannot see the kingdom of God and that unless a person believes that Jesus Christ is God coming in flesh and has – believes that Christ has died for our sins according to the scriptures; that he was buried; that he rose the third day and was seen of many witnesses that that person is going to hell.

And an aim and desire of my life is to save as many people from hell as possible. To give me a child to virtually raise when you don't believe that is to turn over your child to be taught those things.

N.T. 12/30/96 p.158.

child's parent stands *in loco parentis* when the parent consents to that adult having complete responsibility for and control over the child, not for a temporary period of time, but for an indefinite period of time.[9] By Plantiffs' definition, any person who cares for a child stands *in loco parentis* when she believes the child for whom she is caring is not being treated appropriately by parents. As evidenced by the holdings in the cases handed down by our Courts, this is simply not so.

Plaintiffs cite *J.A.L.* in support of their argument that as a matter of law, they stand *in loco parentis* to Ryan and have standing to seek custody of him. The situation in *J.A.L.* was entirely different from the situation in this case.

In *J.A.L.*, the "parents" of the child were two lesbians. The mother of the child was the former life partner of the person seeking partial custody, and presumably had engaged in intimate relations with her. The person seeking partial custody had participated with the mother of the child in the process leading to the child's birth. The child, mother of the child, and the person seeking partial custody lived together continuously under the same roof until the child's mother and the person seeking partial custody ended their partnership. Prior to the breakup, the person seeking partial custody had been named by the child's mother as legal guardian of her child in the event of the mother's death.

In this case, the Plaintiffs seek full custody of Ryan, not partial custody. Mother is not related in any way to Plaintiffs, and has certainly never been involved in intimate relations with them. The Plaintiffs did not participate with Mother in the events leading to Ryan's birth. Plaintiffs, Ryan, and Mother have never lived together under the same roof. Mother has never nominated Plaintiffs to be Ryan's legal

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[9] This differs from the definition of *loco parentis* for purposes of education of training, where a parent may give control over her child to a school authority for a specified period of time. *See Guerrieri v. Tyson*, 147 Pa.Super. 239, 24 A.2d 468 (1942).

guardians; indeed, unlike the situation in *J.A.L.*, she and Ryan have numerous close relatives in the area.

In *Kellogg*, where the Court found the step-mother of the subject children had standing to seek visitation with them, the step-mother was married to the children's father, and lived with the children and their father as the female half of a conventional family unit. Again, the step-mother did not seek full custody of the children, but visitation.

In *Wims*, the child's natural mother had given up her parental rights entirely, and her baby was placed with the plaintiffs as foster parents. The Court stated that while the baby was with the foster parents, they were *in loco parentis* to the baby, but when they gave the baby back to the adoption agency for placement with the adoptive parents, they lost that status.

Contrary to the arguments proffered by Plaintiffs, this is not a proceeding to determine whether Defendant has been an ideal performer in her role as mother of Ryan. Likewise, the issue for resolution does not require a finding that the Read household is an ideal setting for the rearing of this child. We are now presented singly with determining whether Mr. and Mrs. Jarboe in fact enjoyed the standing of *in loco parentis* with regard to Ryan. We are clearly persuaded that they did not.

Mother never consented to giving up custody of Ryan to the Jarboes, and never relinquished her birthright responsibilities to him. She never consented to the Jarboes' choice of clothing, religious instruction, and education for Ryan.

If we were to hold otherwise – that temporary caregivers could sue for custody – every single parent would potentially be in peril of having to defend a similar action from over-zealous (albeit perhaps well-meaning) caregivers and child-care providers. The Jarboes, quite simply, were gratuitous caregivers for Ryan, and did not create *in loco parentis* status for themselves by their actions.

For all the above reason, we will dismiss the Petition for Custody.

APPENDIX F

Office of the District Attorney
Lebanon County
Municipal Building
400 S. 8th Street
Lebanon, Pennsylvania 17042
Telephone – 717 – 374 – 2801

Sradford H. Charles
District Attorney

Michael Wahmann
Chief County Detective

August 26, 1997

Mrs. Abigail Jarboe
416 Maple Street
Lebanon, PA 17046

Adrienne Snelling, Esquire
242 South Eighth Street
Lebanon, PA 17042

Dear Mrs. Jarboe and Attorney Snelling:

I am writing to each of you as a result of requests you have made to file criminal charges. Mrs. Jarboe has made a request that we file criminal charges against Mrs. Ruth Read, who is represented by Attorney Snelling. Mrs. Read, through Attorney Snelling, has asked that criminal charges be filed against Mrs. Jarboe.

Senior Deputy District Attorny David Wingert has personally looked into this matter and has discussed the same with me. David and I have reviewed the applicable criminal

statutes found in the Pennsylvania Crimes Code. We have also taken into consideration evidence and information provided to us by everyone. For reasons I will briefly set forth below, we are declining to initiate criminal charges against anyone at this time.

Quite honestly, I view this matter as a bitterly contest custody fight which is being litigated before Judge Eby. I do not wish to have this office drawn into that fight. On the other hand, we do have an obligation to review complaints which are forwarded to us. That we have done.

With respect to the request to the charge the Reads with perjury, we do not believe that sufficient evidence exists to warrant a filing of perjury charges. Likewise, with respect to the Reads' request to charge the Jarboes with criminal coercion, we do not believe that sufficient evidence exists to bring that charge as well. Under the law, a person who has a good faith (even if unreasonable) belief in the accuracy of what is being represented cannot be guilty of either perjury or criminal coercion. In this case, it is our opinion that Mrs. Jarboe has a good faith belief that Mrs. Read has lied. Therefore, the crime of criminal coercion would not apply. Likewise, is it our opinion that any statements made by Mrs. Read were not material to the ultimate issue before Judge Eby. Therefore, even if one assumes (which we will not do) that Mrs. Read intentionally misrepresented facts to the court, we do not believe that the crime of perjury would exist. Accordingly, charges of perjury would not be appropriate against her.

We make no opinion or comment with respect to the reasonableness of the beliefs of either side. I trust that those are issues which will be addressed before Judge Eby I the ongoing custody battle.

Of course, either of you would be at liberty to file for a

private criminal complaint. I am telling you in advance that unless additional information is brought to the attention of our office, we will not approve a private criminal complaint and you will be relegated to utilizing the procedure set forth in the criminal rules.

Thank you for your attention regarding the above.

Very truly yours,

/s/ Bradford H. Charles
District Attorney
BHC/sld

§2906. Criminal coercion.

1989 **Offense defined**. – A person is guilty of criminal coercion, if, with intent unlawfully to restrict freedom of action of another to the determent of the other, he threatens to:

1988 commit any criminal offense;

1989 accuse anyone of a criminal offense;

1990 expose any secret tending to subject any person to hatred, contempt or ridicule; or

1991 take or withhold action as an official, or cause an official to take or withhold action.

1990 **Defense**. – It is defense to prosecution based on paragraphs (a)(2), (a)(3) or (a)(4) of this section that actor believed the accusation or secret to be true or the proposed official action justified and that his intent was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure of proposed official action, as by desisting from further misbehavior, making good a wrong done, refraining from taking any action of responsibility for which the actor believes the other disqualified.

1991 **Grading**. – Criminal coercion is a misdemeanor of the second degree unless the threat is to commit a felony or the intent of the actor is felonious, in which cases the offense is a misdemeanor of the first degree.

Appendix G

IN THE MAGISTERIAL DISTRCIT COURT
NO. 52-2-01
OF LEBANON COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
VS.
ABIGAIL E. JARBOE

TRANSCRIPT OF PROCEEDINGS
OF PRELIMINARY HEARING

BEFORE: THOMAS M. CAPELLO, DISTIRCT JUSTICE

DATE: Thursday, May 28, 1998
10:00 a.m.

PLACE: 502 State Drive
Lebanon, PA 17042

APPEARNACES:

JENNIFER WISNIEWSKI,
ASSISTANT DISTRICT ATTORNEY
DISTRICT ATTOENRY'S OFFICE
Lebanon Municipal Building
400 South 8th Street, Room 11
Lebanon, PA 17042

Appearing on behalf of the Commonwealth of Pennsylvania

Lebanon Valley Reporting Service
(717) 272-8296

* * *

[p. 25] DISTRICT JUSTICE CAPELLO: Your motion is to dismiss if they haven't met their burden.

MRS. JARBOE: Yes. That's right.

DISTRICT JUSTICE CAPELLO: Okay. I agree with you, okay, they have not met their burden. I already put down there dismissed. Okay. The case is dismissed.

* * *

APPENDIX H

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY PENNSYLVANIA

CIVIL ACTION – LAW

CARL J. JARBOE and ABIGAIL E. JARBOE	: :	Action Number 2001-01674
v.	: :	
CORPORATION OWNING RADIO STATION WLBR, ROBERT ETTER, And LAURA LEBEAU	: : :	Argument

TRANSCRIPT OF PROCEEDINGS

April 21, 2003
10:30 a.m.

LEBANON COUNTY MUNICIPAL BUILDING
COURTOOM NUMBER 3
LEBANON, PENNSYLVANIA

BEFORE: HONORABLE BARRY F. FEUDALE, SENIOR JUDGE

APPEARANCES:

CARL J. JARBOE and ABIGAIL E. JARBOE
pro se

HARRY W. FENTON, ESQUIRE
For – Defendants

CHRISTY L. FRITZ,
OFFICIAL COURT REPORTER

* * *

[pp. 45-46] THE COURT: * * *No judge seems to like pro se litigants. * * *

APPENDIX I

Supreme Court of the United States.
RECTOR, ETC., OF HOLY TRINITY CHURCH
v.
UNITED STATES.
February 29, 1892.

Mr. Justice BREWER delivered the opinion of the court.

Plaintiff in error is a corporation duly organized and incorporated as a religious society under the laws of the state of New York. E. Walpole Warren was, prior to September, [458] 1887, an alien residing in England. In that month the plaintiff in error made a contract with him, by which he was to remove to the city of New York, and enter into its service as rector and pastor; and, in pursuance of such contract, Warren did so remove and enter upon such service. It is claimed by the United States that this contract on the part of the plaintiff in error was forbidden by chapter 164, 23 St. p. 332; and an action was commenced to recover the penalty prescribed by the act. The circuit court held that the contract was within the prohibition of the statute, and rendered judgment accordingly, (36 Fed. Rep. 303,) and the single question presented for our determination is whether it erred in that conclusion.

The first section describes the act forbidden, and is in these words:

'Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, that from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration, of any alien or aliens, any foreigner or foreigners, into the United

States, its territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the inportation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its territories, or the District of Columbia.'

It must be conceded that the act of the corporation is within the letter of this section, for the relation of rector to his church is one of service, and implies labor on the one side with compensation on the other. Not only are the general words 'labor' and 'service' both used, but also, as it were to guard against any narrow interpretation and emphasize a breadth of meaning, to them is added 'of any kind;' and, further, as noticed by the circuit judge in his opinion, the fifth section, which makes specific exceptions, among them professional actors, artists, lecturers, singers, and domestic [459] servants, strengthens the idea that every other kind of labor and service was intended to be reached by the first section. While there is great force to this reasoning, we cannot think congress intended to denounce with penalties a transaction like that in the present case. It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers. This has been often asserted, and the Reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator; for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act. As said in Stradling v. Morgan, Plow. 205: 'From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some ap-

pearance, and those statutes which comprehend all things in the letter they have expounded to extend to but some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the legislature, which they have collected sometimes by considering the cause and necessity of making the act, sometimes by comparing one part of the act with another, and sometimes by foreign circumstances.'

In Pier Co. V. Hannam, 3 Barn. & Ald. 266, ABOTT, C.J., quotes from Lord Coke as follows: 'Acts of parliament are to be so construed as no man that is innocent or free from injury or wrong be, by a literal construction, punished or endangered.' In the case of State v. Clark, 29 N.J. Law, 96, 99, it appeared that an act had been passed, making it a misdemeanor to willfully break down a fence in the possession of another person. Clark was indicted [460] under that statute. The defense was that the act of breaking down the fence, though willful, was in the exercise of a legal right to go upon his own lands. The trial court rejected the testimony offered to sustain the defense, and the supreme court held that this ruling was error. In its opinion the court used this language: 'The act of 1855, in terms, makes the willful opening, breaking down, or injuring of any fences belonging to or in the possession of any other person a misdemeanor. In what sense is the term 'willful' used? In common parlance, 'willful' is used in the sense of 'intentional,' as distinguished from 'accidental' of 'involuntary.' Whatever one does intentionally, he does willfully. Is it used in that sense in this act? Did the legislature intend to make the intentional opening of a fence for the purpose of going upon the land of another indictable, if done by permission or for a lawful purpose? * * * We cannot suppose such to have been the actual intent. To adopt such a construction would put a stop to the ordinary

business of life. The language of the act, if construed literally, evidently leads to an absurd result. If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity. The court must restrain the words. The object designed to be reached by the act must limit and control the literal import of the terms and phrases employed.' In U.S. v. Kirby, 7 Wall. 482, 486, the defendants were indicted for the violation of an act of congress providing 'that if any person shall knowingly and willfully obstruct or retard the passage of the mail, or of any driver or carrier, or of any horse or carriage carrying the same, he shall, upon conviction, for every such offense, pay a fine not exceeding one hundred dollars.' The specific charge was that the defendants knowingly and willfully retarded the passage of one Farris, a carrier of the mail, while engaged in the performance of his duty, and also in like manner retarded the steam-boat Gen. Buell, at that time engaged in carrying the mail. To this indictment the defendants pleaded specially that Farris had been indicted for murder by a court of competent authority in Kentucky; that a bench-warrant had been issued and [**461**] placed in the hands of the defendant Kirby, the sheriff of the county, commanding him to arrest Farris, and bring him before the court to answer to the indictment; and that, in obedience to this warrant, he and the other defendants, as his posse, entered upon the steamboat Gen. Buell and arrested Farris, and used only such force as was necessary to accomplish that arrest. The question as to the sufficiency of this plea was certified to this court, and it was held that the arrest of Farris upon the warrant from the state court was not an obstruction of the mail, or the retarding of the passage of a carrier of the mail, within the meaning of the act. In its opinion the court says: 'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character.

Thereason of the law in such cases should prevail over its letter. The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity,' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1 Edw. II., which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire, 'for he is not to be hanged because he would not stay to be burnt.' And we think that a like common sense will sanction the ruling we made, that the act of congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment of murder.' The following cases may be also cited: Henry v. Tilson, 17 Vt. 479; Ryegate v. Wardsboro, 30 Vt. 743; Ex parte Ellis, 11 Cal. 220; Ingraham v. Speed, 30 Miss. 410; Jackson v. Collins, 3 Cow. 89; People v. Insurance Co., 15 Johns. 358; Burch v. Newbury, 10 N.Y. 374; [**462**] People v. Commissioners, 95 N.Y. 554, 558; People v. Lancombe, 99 N.Y. 43, 49, 1 N.E. Rep. 599; Chesapeake & Ohio Canal Co. v. Baltimore & Ohio R. Co., 4 Gill & J.152; Osgood v. Breed, 12 Mass. 525, 530; Wilbur v. Crane, 13 Pick. 284; Oates v. Bank, 100 U.S. 239.

Among other things which may be considered in determining the intent of the legislature is the title of the act. We do not mean that it may be used to add or take from the body of the statute, (Haddon v. Collector, 5 Wall. 107,) but it may help to interpret its meaning. In the case of U.S. v. Fisher, 2 Cranch, 358, 386, Chief Justice MARSHALL said; 'On the influence which the title ought to have in construing the enacting clauses, much has been said, and yet it is not easy to discern the point of difference between the opposing counsel in this respect. Neither party contends that the title

of an act can control plain words in the body of the statute; and neither denies that, taken with other parts, it may assist in removing ambiguities. Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice, and will have its due share of consideration.' And in the case of U.S. v. Palmer, 3 Wheat. 610, 631, the same judge applied the doctrine in this way: 'The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the legislature intended to apply them. Did the legislature intend to apply these words to the subjects of a foreign power, who in a foreign ship may commit murder or robbery on the high seas? The title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature. The title of this act is, 'An act for the punishment of certain crimes against the United States.' It would seem that offenses against the United States, not offenses against the human race, were the crimes which the legislature intended by this law to punish.

[463] It will be seen that words as general as those used in the first section of this act were by that decision limited, and the intent of congress with respect to the act was gathered partially, at least, from its title. Now, the title of this act is, 'An act to prohibit the importation and migration of foreigners and aliens under the contract or agreement to perform labor in the United States, its territories, and the District of Columbia. Obviously the thought expressed in this reaches only to the work of the manual laborer, as distinguished from that of the professional man. No one reading such a title would suppose that congress had in its mind any purpose of staying the coming into this country of ministers of the gospel, or, indeed, of any class whose toil is that of the

brain. The common understanding of the terms 'labor' and 'laborers' does not include preaching and preachers, and it is to be assumed that words and phrases are used in their ordinary meaning. So whatever of light is thrown upon the statute by the language of the title indicates an exclusion from its penal provisions of all contract for the employment of ministers, rectors, and pastors.

Again, another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body. U.S. v. Railroad Co., 91 U.S. 72, 79. The situation which called for this statute was briefly but fully stated by Mr. Justice BROWN when, as district judge, he decided the case of U.S. v. Craig, 28 Fed. Rep. 795, 798: 'The motives and history of the act are matters of common knowledge. It had become the practice for large capitalists in this country to contract with their agents abroad for the shipment of great numbers of an ignorant and servile class of foreign laborers, under contracts by which the employer agreed, upon the one hand, to prepay their passage, while, upon the other hand, the laborers agreed to work after their arrival for a certain time at a low rate of wages. The effect of this was to break down the labor market, and to reduce other laborers engaged in like occupations to the level [**464**] of the assisted immigrant. The evil finally became so flagrant that an appeal was made to congress for relief by the passage of the act in question, the design of which was to raise the standard of foreign immigrants, and to discountenance the migration of those who had not sufficient means in their own hands, or those of their friends, to pay their passage.'

It appears, also, from the petitions, and in the testimony presented before the committees of congress, that it was this cheap, unskilled labor which was making the trouble, and the influx of which congress sought to prevent. It was never

suggested that we had in this country a surplus of brain toilers, and, least of all, that the market for the services of Christian ministers was depressed by foreign competition. Those were matters to which the attention of congress, or of the people, was not directed. So far, then, as the evil which was sought to be remedied interprets the statute, it also guides to an exclusion of this contract from the penalties of the act.

A singular circumstance, throwing light upon the intent of congress, is found in this extract from the report of the senate committee on education and labor, recommending the passage of the bill: 'The general facts and considerations which induce the committee to recommend the passage of this bill are set forth in the report of the committee of the house. The committee report the bill back without amendment, although there are certain features thereof which might well be changed or modified, in the hope that the bill may not fail of passage during the present session. Especially would the committee have otherwise recommended amendments, substituting for the expression, 'labor and service,' whenever it occurs in the body of the bill, the words 'manual labor' or 'manual service,' as sufficiently broad to accomplish the purposes of the bill, and that such amendments would remove objections which a sharp and perhaps unfriendly criticism may urge to the proposed legislation. The committee, however, believing that the bill in its present form will be construed as including only those whose labor or service is manual in character, and being very desirous that the bill become a law before the adlournment, have reported the bill without [**465**] change.' Page 6059, Congressional Record, 48th Cong. And, referring back to the report of the committee of the house, there appears this language: 'It seeks to restrain and prohibit the immigration or importation of laborers who would have never seen our shores but for the inducements and allurements of men whose only object is to obtain labor at the lowest possible rate, regardless

of the social and material well-being of our own citizens, and regardless of the evil consequences which result to American laborers from such immigration. This class of immigrants care nothing about our institutions, and in many instances never even heard of them. They are men whose passage is paid by the importers. They come here under contract to labor for a certain number of years, They are ignorant of our social condition, and, that they may remain so, they are isolated and prevented from coming into contact with Americans. They are generally from the lowest social stratum, and live upon the coarsest food, and in hovels of a character before unknown to American workmen. They, as a rule, do not become citizens, and are certainly not a desirable acquisition to the body politic. The inevitable tendency of their presence among us is to degrade American labor, and to reduce it to the level of the imported pauper labor.' Page 5359, Congressional Record, 48th Cong.

We find, therefore, that the title of the act, the evil which was intended to be remedied, the circumstances surrounding the appeal to the congress, the reports of the committee of each house, all concur in affirming that the intent of congress was simply to stay the influx of this cheap, unskilled labor.

But, beyond all these matters, no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation. The commission to Christopher Columbus, prior to his sail westward, is from 'Ferdinand and Isabella, by the grace of God, king and queen of Castile,' etc., and recites that 'it is hoped that by God's assistance some of the continents and islands in the [**466**] ocean will be discovered,' etc. The first colonial grant, that made to Sir Walter Raleigh in1584, was from 'Elizabeth, by the grace of God, of England, Fraunce and Ireland, queene, defender of the faith,' etc; and the grant authorizing

him to enact statutes for the government of the proposed colony provided that 'they be not against the true Christian faith nowe processed in the Church of England,' The first charter of Virginia, granted by King James I. in 1606, after reciting the application of certain parties for a charter, commenced the grant in these words: 'We, greatly commending, and graciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the glory of his Divine Majesty, in propagating of Christian Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those parts, to human Civility, and to a settled and quiet Government; DO, by these our Letters-Patents, graciously accept of, and agree to, their humble and well-intended Desires.'

Language of similar import may be found in the subsequent charters of that colony, from the same king, in 1609 and 1611; and the same is true of the various charters granted to the other colonies. In language more or less emphatic is the establishment of the Christian religion declared to be one of the purposes of the grant. The celebrated compact made by the pilgrims in the Mayflower, 1620, recites: 'Having undertaken for the glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid.'

The fundamental orders of Connecticut, under which a provisional government was instituted in 1638-39, commence with this declaration: 'Forasmuch as it hath pleased the Allmighty God by the wise disposition of his diuyne

pruidence [467] so to Order and dispose of things that we the Inhabitants and residents of Windsor, Hartford, and Wethersfield are now cohabiting and dwelling in and vppon the River of Conectecotte and the Lands thereunto adioyneing; And well knowing where a people are gathered togather in the word of God requires that to mayntayne the peace and vnion of such a people there should be an orderly and decent Gouerment established according to God, to order and dispose of the affayres of the people at all seasons as occation shall require; doe therefore assotiate and conioyne our selues to be as one Publike State or Comonwelth; and doe, for our selues and our Successors and such as shall be adioyned to vs att any tyme hereafter, enter into Combination and Confederation togather, to mayntayne and presearue the liberty and purity of the gospell of our Lord Jesus wch we now prfesse, as also the disciplyne of the Churches, wch according to the truth of the said gospell is now practised amongst vs.'

In the charter of privileges granted by William Penn to the province of Pennsylvania, in 1701, it is recited: 'Because no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the freedom of their Consciences, as to their Religious Profession and Worship; And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith, and Worship, who only doth enlighten the Minds, and persuade and convince the Understanding of People, I do hereby grant and declare,' etc.

Coming nearer to the present time, the declaration of independence recognizes the presence of the Divine in human affairs in these words: 'We hold these truths to be self-evident, that all men are created equal, that thet are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.' 'We, therefore, the Representatives of the united States of

America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name and by Authority of the good People of these Colonies, solemnly publish and declare,' etc.; 'And for the [468] support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.'

If we examine the constitutions of the various states, we find in them a constant recognition of religious obligations. Every constitution of every one of the 44 states contains language which, either directly or by clear implication, recognizes a profound reverence for religion, and an assumption that its influence in all human affairs is essential to the well-being of the community. This recognition may be in the preamble, such as is found in the constitution of Illinois, 1870; 'We, the people of the state of Illinois, grateful to Almighty God for the civil, political, and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations,' etc.

It may be only in the familiar requsition that all officers shall take an oath closing with the declaration, 'so help me God.' It may be in clauses like that of the constitution of Indiana, 1816, art. 11, § 4: 'The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God.' Or in provisions such as are found in articles 36 and 37 of the declaration of rights of the constitution of Maryland, (1867;) 'That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty: wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good

order, peace, or safety of the state, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness or juror on account of his religious belief: provided, he [469] believes in the existence of God, and that, under his dispensation, such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come. That no religious test ought ever to be required as a qualification for any office of profit or trust in this state, other than a declaration of belief in the existence of God; nor shall the legislature prescribe any other oath of office than the oath prescribed by this constitution.' Or like that in articles 2 and 3 of part 1 of the constitution of Massachusetts, (1780:) 'It is the right as well as the duty of all men in society publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. * * * As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion, and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic or religious societies to make suitable provision, at their own expense, for the institution of the public worship of God and for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.' Or, as in sections 5 and 14 of article 7 of the constitution of Mississippi, (1832:) 'No

person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil de partment of this state. * * * Religion morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged in this state.' Or by article 22 of the constitution of Delaware, (1776,) which required all officers, besides an oath of allegiance, to make and subscribe the following declaration: 'I, A. B., do profess [470] faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.'

Even the constitution of the United States, which is supposed to have little touch upon the private life of the individual, contains in the first amendment a declaration common to the constitutions of all the states, as follows: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' etc.,–and also provides in article 1, § 7, (a provision common to many constitutions,) that the executive shall have 10 days (Sundays excepted) within which to determine whether he will approve or veto a bill.

There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons. They are organic utterances. They speak the voice of the entire people. While because of a general recognition of this truth the question has seldom been presented to the courts, yet we find that in Updegraph v. Com., 11 Serg. & R. 394, 400, it was decided that, 'Christianity, general Christianity, is, and always has been, a part of the common law of Pennsylvania; * * * not Christianity with an established church and tithes and spiritual courts, but Christianity with liberty of

conscience to all men.' And in People v. Ruggles, 8 Johns. 290, 294, 295, Chancellor KENT, the great commentator on American law, speaking as chief justice of the supreme court of New York, said: 'The people of this state, in common with the people of this country, profess the general doctrines of Christianity as the rule of their faith and practice; and to scandalize the author of these doctrines is not only, in a religious point of view, extremely impious, but, even in respect to the obligations due to society, is a gross violation of decency and good order. * * * The free, equal, and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious [471] subject, is granted and secured; but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community is an abuse of that right. Nor are we bound by any expressions in the constitution, as some have strangely supposed, either not to punish at all, or to punish indiscriminately the like attacks upon the religion of Mahomet or of the Grand Lama; and for this plain reason, that the case assumes that we are a Christian people, and the morality of the country is deeply ingrafted upon Christianity, and not upon the doctrines or worship of those impostors.' And in the famous case of Vidal v. Girard's Ex'rs, 2 How. 127, 198, this court, while sustaining the will of Mr. Girard, with its provision for the creation of a college into which no minister should be permitted to enter, observed: 'It is also said, and truly, that the Christian religion is a part of the common law of Pennsylvania.'

If we pass beyond these matters to a view of American life, as expressed by its laws, its business, its customs, and its society, we find every where a clear recognition of the same truth. Among other matters note the following: The form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, 'In the name of God, amen;' the laws

respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing every where under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation. In the face of all these, shall it be believed that a congress of the United States intended to make it a misdemeanor for a church of this country to contract for the services of a Christian minister residing in another nation?

[472] Suppose, in the congress that passed this act, some member had offered a bill which in terms declared that, if any Roman Catholic church in this country should contract with Cardinal Manning to come to this country, and enter into its service as pastor and priest, or any Episcopal church should enter into a like contract with Canon Farrar, or any Baptist church should make similar arrangements with Rev. Mr. Spurgeon, or any Jewish synagogue with some eminent rabbi, such contract should be adjudged unlawful and void, and the church making it be subject to prosecution and punishment. Can it be believed that it would have received a minute of approving thought or a single vote? Yet it is contended that such was, in effect, the meaning of this statute. The construction invoked cannot be accepted as correct. It is a case where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil; and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the

courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute.

The judgment will be reversed, and the case remanded for further proceedings in accordance with this opinion.

12 S.Ct. 511, 143 U.S. 457, 36 L.Ed. 226

APPENDIX J

LEBANON COUNTY ABORTION STATISTICS

Prepared by Abigail E. Jarboe (717) 272-1371

The Pennsylvania Department of Health requests the following statement be included in any publication or release of the within data:

> "These data were provided by the Bureau of Health Statistics and Research, Pennsylvania Department of Health. The Department specifically disclaims responsibility for any analyses, interpretations or conclusions."

The Pennsylvania Department of Health can be reached at (717) 783-2548.

Abigail Jarboe points out that the Bible tells us that God hates seven things, one of them being "hands that shed innocent blood".

See Proverbs 6:16-17. Proverbs 24:11-12 states:

> "If thou forbear to deliver them that are drawn unto death, and those that are ready to be slain; If thou sayest, Behold we knew it not; doth not he that pondereth the heart consider it? And he that keepeth thy soul, doth not he know it? and shall not he render to every man according to his works?"

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The Bible tells us "When the righteous are in authority, the people rejoice: but when the wicked beareth rule, the people mourn." (Proverbs 29:2). The only righteousness anyone has

is that which comes through the shed blood of Jesus Christ. The Bible also tells us how to get that righteousness and how to tell who is righteous.

LEBANON COUNTY RESIDENTS' INDUCED ABORTIONS (LEGALIZED MURDER)

YEAR	(Total)	WEEKS OF GESTATION						
	8 or less	9-10	11-12	13-14	15-17	18-20	21-23	24 +
2001	(150) 67	56	14	4	6	1	2	0
2000	(138) 61	45	18	11	2	1	0	0
1999	(129) 43	48	20	9	7	2	0	0
1998	(167) 59	64	30	8	6	0	0	0
1997	(155) 65	56	21	8	5	0	0	0
1996	(155) 51	43	36	15	7	1	2	0
1995	(203) 93	54	36	12	5	2	1	0
1994	(190) 93	51	29	10	5	1	1	0
1993	(216) 110	52	30	11	10	2	1	0
=	(1,503) 642	469	234	88	53	10	7	0

ONE THOUSAND FIVE HUNDRED THREE UNBORN CHILDREN OF LEBANON RESIDENTS LEGALLY MURDERED BY ABORTION BETWEEN 2001-1993

YEAR		WEEKS OF GESTATION						
	Total	8 or less	9-10	11-12	13-15	16-19	20-23	24 or +
1992	223	98	72	29	19	4	1	0
1991	254	102	87	47	13	4	0	1

LEBANON COUNTY RESIDENTS' INDUCED ABORTIONS
BY AGE OF MOTHER OF UNBORN BABY LEGALLY MURDERED BY ABORTION

Year	Total	Under 15	15-17	18-19	20-24	25-29	30-34	35-39	40+
2001	150	2	5	21	51	27	31	9	4
2000	138	0	5	16	52	25	18	18	4
1999	129	3	5	18	41	25	18	15	4
1998	167	0	10	18	57	39	23	12	8
1997	155	1	7	22	57	30	19	18	1
1996	155	2	10	24	52	33	23	6	5
1995	203	0	9	23	74	50	34	10	3
1994	190	2	13	28	68	38	23	16	2
1993	216	0	20	37	63	52	25	17	2
1992	223	3	17	40	69	47	25	17	5
1991	254	1	25	37	88	55	28	19	1
1990	265	2	19	37	98	49	33	24	3
1989	231	2	22	30	86	41	31	14	5
1988	258								
1987	258								
1986	243								
1985	281								
1984	334								
1983	314								
1982	352								
1981	373								
1980	355								
1979	313								
1978	305								
1977	292,	88 DONE AT HOSPITAL IN LEBANON COUNTY							
1976	246,	108 DONE IN LEBANON COUNTY							
1975	182,	86 DONE AT A HOSPITAL IN LEBABON COUNTY							

TOTAL 6,582 UNBORN CHILDREN OF LEBANON RESIDENTS LEGALLY MURDERED BY ABORTION BETWEEN 1975 AND 2001

UNBORN CHILDREN WHOSE LEGAL MURDER BY ABORTION OCCURRED IN LEBANON COUNTY

Year	Number	Year	Number	Year	Number	Year	Number
2001	0	1995	0	1989	0	1983	68
2000	0	1994	0	1988	0	1982	74
1999	0	1993	0	1987	0	1981	82
1998	0	1992	0	1986	0	1980	76
1997	0	1991	0	1985	20	1979	69
1996	0	1990	0	1984	37	1978	86

Year	Number
1977	88
1976	108
1975	86

Prepared by Abigail E. Jarboe from abortion statistics reported by the Pennsylvania Department of Health.